

BRING TO MEETING

REAL PROPERTY, PROBATE & TRUST LAW SECTION
www.rpptl.org



Executive Council Meeting Out of State

AGENDA

The Four Seasons - Santa Barbara
1260 Channel Drive
Santa Barbara, CA 93108
Phone: (805) 969-2261

Saturday, February 26, 2011
8:30 a.m.

BRING TO THE MEETING

Real Property, Probate and Trust Law Section
Executive Council Meeting
The Four Seasons – Santa Barbara, CA

AGENDA

- I. [Presiding](#) — *Brian J. Felcoski, Chair*
- II. [Attendance](#) — *Debra L. Boje, Secretary*
- III. [Minutes of Previous Meeting](#) — *Debra L. Boje, Secretary*
 1. Approval of 11/6/2010 Executive Council Meeting Minutes and Roster **pp. 10-45**
- IV. [Chair's Report](#) — *Brian J. Felcoski*
 1. 2010 – 2011 RPPTL Executive Council Schedule **pp. 46**
- V. [Chair-Elect's Report](#) — *George J. Meyer*
 1. 2011 – 2012 RPPTL Executive Council Schedule **pp. 47**
- VI. [Liaison with Board of Governors Report](#) — *Daniel L. DeCubellis*
 1. BOG Summary – December 10, 2010 **pp. 48-51**
- VII. [Treasurer's Report](#) — *Michael A. Dribin*
 1. 2010-11 Monthly Report Summary **pp. 52-70**
- VIII. [Circuit Representative's Report](#) — *Andrew O'Malley, Director*
 1. First Circuit – W. Christopher Hart; Colleen Coffield Sachs
 2. Second Circuit – J. Breck Brannen; Sarah S. Butters; John T. Lajoie
 3. Third Circuit – John J. Kendron; Guy W. Norris; Michael S. Smith; Clay Alan Schnitker
 4. Fourth Circuit – Roger W. Cruce; Brenda Ezell
 5. Fifth Circuit – Del G. Potter; Arlene C. Udick
 6. Sixth Circuit – Robert N. Altman; Gary L. Davis; Joseph W. Fleece, III; George W. Lange, Jr.; Sherri M. Stinson; Kenneth E. Thornton; Hugh C. Umstead; Richard Williams, Jr.
 7. Seventh Circuit – Sean W. Kelley; Michael A. Pyle; Richard W. Taylor; Jerry B. Wells
 8. Eighth Circuit – Jeffrey R. Dollinger; Richard M. White Jr.
 9. Ninth Circuit – David J. Akins; Amber J. Johnson; Stacy A. Prince; Joel H. Sharp Jr.; Charles D. Wilder; G. Charles Wohlust
 10. Tenth Circuit – Sandra Graham Sheets; Robert S. Swaine; Craig A. Mundy
 11. Eleventh Circuit – Carlos A. Battle; Raul Ballaga; Aniella Gonzalez; Thomas M. Karr; Patrick J. Lannon; Marsha G. Madorsky; William T. Muir; Hung Nguyen; Adrienne Frischberg Promoff; Eric Virgil
 12. Twelfth Circuit – Kimberly A. Bald; Michael L. Foreman; P. Allen Schofield
 13. Thirteenth Circuit – Lynwood F. Arnold, Jr.; Michael A. Bedke; Thomas N. Henderson; Wilhelmina F. Kightlinger; Christian F. O’Ryan; William R. Platt; R. James Robbins; Stephen H. Reynolds; Susan K. Spurgeon
 14. Fourteenth Circuit – Brian Leebriick
 15. Fifteenth Circuit – Elaine M. Bucher; Glen M. Mednick; Robert M. Schwartz
 16. Sixteenth Circuit – Julie A. Garber
 17. Seventeenth Circuit – Robert B. Judd; Shane Kelley; Alexandra V. Rieman
 18. Eighteenth Circuit – Jerry W. Allender; Steven C. Allender; Stephen P. Heuston

19. Nineteenth Circuit – Jane L. Cornett
20. Twentieth Circuit – Sam W. Boone; John T. Cardillo; Michael T. Hayes; Alan S. Kotler; Jon Scuderi; D. Keith Wickenden

IX. Real Property Division — *Margaret A. Rolando*, *Real Property Division Director*
Director

Information Items

1. Letter from RPPTL Section Chair to Jeffery T. Picker regarding FAO #2011-; Non-Lawyer Assistance in Short Sale Transactions **pp. 71-72**

X. Probate and Trust Law Division – *Wm. Fletcher Belcher*, *Probate and Trust Law Division Director*
Director

Information Items

1. Letter from RPPTL Section Chair to Professional Ethics Committee of The Florida Bar suggesting minor revisions and clarifications to Proposed Advisory Opinion 10-3, concerning the ethical obligations of a lawyer when requested to provide confidential information pertaining to a deceased client, together with red line text of the Proposed Advisory Opinion showing the requested changes **pp. 73-77**
2. Comment filed by RPPTL Section with Florida Supreme Court concerning recent changes to Florida Probate Rule 5.260 (Caveat; Proceedings) deleting required contents of a caveat. This item is from the Probate Law and Procedure Committee - *Tae Bronner Kelley, Chair* **pp. 78-87**

XI. General Standing Committee — *George J. Meyer*, *Director and Chair-Elect*

1. The Section's Long Range Planning Committee met on January 26, 2011. The Committee is recommending for election by the Section the following slate of candidates for the the 2011-12 Bar year:

Chair Elect - W. Fletcher Belcher
Real Property Law Division Director - Margaret A. Rolando
Probate & Trust Law Division Director - Michael A. Dribin
Treasurer - Andrew M. O'Malley
Secretary - Michael J. Gelfand
Circuit Representatives Director - Debra Boje
Out-of-State Representatives - John Fitzgerald, Gerard Flood and Michael Stafford
Circuit Representatives - See list attached at **pp. 89**

In addition, the Committee recommends to the Executive Committee the following appointments for the 2011-12 Bar year:

CLE Committee Chair - Deborah Goodall
Legislative Committee Chair - Barry F. Spivey
Legislative Committee Vice-Chair for Real Property Law Division - Robert Freedman
Legislative Committee Vice-Chair for Probate & Trust Law Division - William Hennessey.

XII. General Standing Committee Reports – George J. Meyer, Director and Chair-Elect

1. **Actionline** – J. Richard Caskey, Chair; Scott P. Pence and Rose M. LaFemina, Co-Vice Chairs
2. **Amicus Coordination** – Robert W. Goldman, John W. Little, III and Kenneth B. Bell Co-Chairs
3. **Budget** – Michael A. Dribin, Chair; Pamela O. Price, Vice Chair
4. **Bylaws** – W. Fletcher Belcher, Chair
5. **CLE Seminar Coordination** – Deborah P. Goodall, Chair; Sancha B. Whynot, Laura Sundberg and Sylvia B. Rojas, Co-Vice Chairs
 - A. 2010 – 2011 CLE Schedule **pp. 88**
6. **2011 Convention Coordinator** – S. Katherine Frazier and Jon Scuderi, Co Chairs
Michael A. Dribin, Vice Chair
7. **Fellowship** – Michael A. Bedke, Chair; Tae Kelley Bronner and Phillip Baumann, Co-Vice Chairs

2010 New Fellows: Benjamin Bush, Elisa Lucchi, Theodore Kypreos, Navin R Pasem
8. **Florida Bar Journal** – Kristen M. Lynch, Chair Probate Division; William P. Sklar, Chair Real Property Division
9. **Legislative Review** – Michael J. Gelfand, Chair; Alan B. Fields and Barry F. Spivey, Co-Vice Chairs
10. **Legislative Update 2011** – Robert S. Swaine, Chair; Stuart H. Altman, Charles I. Nash, and R. James Robbins, Co-Vice Chairs
11. **Liaison Committees:**
 - A. **ABA:** Edward F. Koren; Julius J. Zschau
 - B. **BLSE:** Michael C. Sasso, W. Theodore Conner, David M. Silberstein, Anne Buzby-Walt.
 - C. **Business Law Section:** Marsha G. Rydberg
 - D. **BOG:** Daniel L. DeCubellis
 - E. **CLE Committee:** Deborah P. Goodall
 - F. **Clerks of the Circuit Court:** Laird A. Lile
 - G. **Council of Sections:** Brian J. Felcoski and George J. Meyer
 - H. **FLEA / FLSSI:** David C. Brennan; John Arthur Jones; Roland Chip Waller
 - I. **Florida Bankers:** Stewart Andrew Marshall, III; Mark T. Middlebrook
 - J. **Judiciary:** Judge Jack St. Arnold, Judge Gerald B. Cope, Jr., Judge George W. Greer; Judge Melvin B. Grossman; Judge Hugh D. Hayes; Judge Claudia Rickert Isom, Judge Maria M. Korvick; Judge Beth Krier, Judge Lauren Laughlin; Judge Celeste H. Muir; Judge Robert Pleus; Judge Richard Suarez; Judge Morris Silberman; Judge Patricia V. Thomas; Judge Walter L. Schafer, Jr.
 - K. **Law Schools:** Frederick R. Dudley, Stacy O. Kalmanson, and Professor James J. Brown
 - L. **Out of State:** Michael P. Stafford; John E. Fitzgerald, Jr., Gerard J. Flood

12. **Long Range Planning Committee** – George J. Meyer, Chair
13. **Member Communications and Information Technology** – Alfred A. Colby, Chair; S. Dresden Brunner and Nicole C. Kibert, Co – Vice Chair
14. **Membership Services** – Phillip A. Baumann, Chair; Mary E. Karr, Vice Chair
15. **Membership Diversity Committee** – Lynwood T. Arnold, Jr., and Fabienne E. Fahnestock, Co-Chairs; Karen Gabbadon, Vice-Chair
16. **Mentoring** – Guy S. Emerich, Chair; Jerry E. Aron and Keith S. Kromash, Co-Vice Chairs
17. **Meeting Planning Committee** – Sandra F. Diamond, Chair
18. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs
19. **Professionalism & Ethics** – Lee A. Weintraub, Chair; Paul E. Roman and Lawrence J. Miler, Co-Vice Chairs
20. **Pro Bono** – Gwynne A. Young and Adele I. Stone, Co Chair; Tasha K. Pepper-Dickinson, Vice Chair
21. **Sponsor Coordinators** – Kristen M. Lynch, Chair; Wilhelmina Kightlinger, Jon Scuderi, J. Michael Swaine, Adele I. Stone, Marilyn M. Polsen, Co-Vice Chairs
22. **Strategic Planning** – George J. Meyer, Chair

XIII. Probate and Trust Law Division Committee Reports - *Wm. Fletcher Belcher - Director*

1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela M. Adams, Chair
2. **Ad Hoc Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley, Vice Chair
3. **Ad Hoc Study Committee on Estate Planning Attorney Conflict of Interest** - William T. Hennessey III, Chair
4. **Asset Preservation** – Jerome L. Wolf and Brian C. Sparks, Co-Chairs
5. **Attorney/Trust Officer Liaison Conference** – Robin J. King, Chair; Jack A. Falk, Jr., Vice Chair; Mark T. Middlebrook, Corporate Fiduciary Chair
6. **Estate and Trust Tax Planning** – Richard R. Gans, Chair; Harris L. Bonnette, Jr., and Elaine M. Bucher, Co-Vice Chairs
7. **Florida Electronic Court Filing** – Rohan Kelley, Chair; Laird A. Lile, Vice Chair
8. **Guardianship and Advance Directives** – Sean W. Kelley and Alexandra V. Rieman, Co-Chairs; Seth A. Marmor and Sherri M. Stinson, Co-Vice Chairs

9. **IRA, Insurance and Employee Benefits** – Linda Suzanne Griffin and L. Howard Payne, Co-Chairs; Rex E. Moule, Jr., Vice Chair
10. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky
11. **Liaisons with Tax Section** – Lauren Y. Detzel, William R. Lane, Jr., David Pratt; Brian C. Sparks and Donald R. Tescher
12. **Power of Attorney** – Tami F. Conetta, Chair; David R. Carlisle, Vice Chair
13. **Principal and Income** – Edward F. Koren, Chair
14. **Probate and Trust Litigation** – William T. Hennessey, III, Chair; Thomas M. Karr and Jon Scuderi, Co-Vice Chairs
15. **Probate Law and Procedure** – Tae Kelley Bronner, Chair; S. Dresden Brunner, Anne Buzby-Walt and Jeffrey S. Goethe, Co-Vice Chairs
16. **Trust Law** – Shane Kelley, Chair; Angela M. Adams, John C. Moran and Laura P. Stephenson, Co-Vice Chairs
17. **Wills, Trusts and Estates Certification Review Course** – Anne Buzby-Walt, Chair; Deborah L. Russell, Vice Chair

XIV. Real Property Division Committee Reports

1. **Condominium and Planned Development** – Robert S. Freedman, Co-Chair; Steven Mezer, Co-Chair; Jane Cornett, Vice-Chair
2. **Construction Law** – Brian Wolf, Chair; Hardy Roberts and Arnold Tritt, Co Vice-Chairs
3. **Construction Law Institute** – Wm. Cary Wright, Chair; Michelle Reddin and Reese Henderson, Co-Vice Chairs
4. **Construction Law Certification Review Course** – Kim Ashby, Chair; Bruce Alexander and Melinda Gentile, Co Vice-Chair
5. **Governmental Regulation of Real Estate** – Eleanor Taft, Chair; Nicole Kibert, Kristen Brundage and Frank L. Hearne, Co Vice-Chairs
6. **Residential Real Estate Committee and Industry Liaison** – Frederick Jones, Chair; William J. Haley, Vice Chair
7. **Land Trusts** – S. Katherine Frazier, Chair; Wilhelmena Kightlinger, Vice Chair
8. **Landlord and Tenant** – Neil Shoter, Chair; Scott Frank, Vice Chair
9. **Legal Opinions** – David R. Brittain and Roger A. Larson, Co Chairs; Burt Bruton, Vice Chair
10. **Liaisons with FLTA** – Norwood Gay and Alan McCall Co-Chairs; Barry Scholnik, John S. Elzeer, Joe Reinhardt, James C. Russick, Lee Huzagh, Co-Vice Chairs

11. **Mortgages and Other Encumbrances** – Salome Zikakis, Chair; Robert Stern, Co-Vice Chair
12. **Real Estate Certification Review Course** – Ted Conner, Chair; Guy W. Norris and Raul Ballaga, Co-Vice Chairs
13. **Real Property Forms** – Homer Duval, III, Chair; Jeffrey T. Sauer and Arthur Menor, Vice Chairs
14. **Real Property Insurance** – Jay D. Mussman, Chair; Andrea Northrop and Wm. Cary Wright, Co-Vice Chairs
15. **Real Property Litigation** – Mark A. Brown, Chair; Eugene E. Shuey and Martin Awerbach, Co-Vice Chairs
16. **Real Property Problems Study** – Wayne Sobien, Chair; Jeanne Murphy and Pat J. Hancock, Co-Vice Chair
17. **Title Insurance & Title Insurance Liaison** – Melissa Murphy, Chair; Homer Duvall and Kristopher Fernandez, Co-Vice Chairs
18. **Title Issues and Standards** – Patricia Jones, Chair; Robert Graham, Karla Gray and Christopher Smart, Co-Vice Chairs

XV. Adjourn



**The Florida Bar
Real Property, Probate & Trust Law Section**

Special Thanks to the

GENERAL SPONSORS

Attorney's Title Fund Services, LLC

Christie's

Fidelity National Title Group

First American Title Insurance Company

Florida Bar Foundation

Gibraltar Bank

Harris Private Bank

HFBE Inc.

JP Morgan

Management Planning, Inc.

Old Republic National Title Insurance

Regions Bank

ReQuire Release Tracking

Stewart Title Company

SunTrust Bank

Wells Fargo Private Bank

U.S. Trust



**The Florida Bar
Real Property, Probate & Trust Law Section**

Special Thanks to the

COMMITTEE SPONSORS

Ashar Group Life Settlement Specialists
Insurance for Estate Planning Committee

BNY Mellon Wealth Management
&
Florida Bar Foundation
Probate Law & Procedure Committee

Coral Gables Trust
Guardianship & Advanced Directives Committee

First American Title Insurance Company
Condominium & Planned Development Committee

Management Planning, Inc.
Estate & Trust Tax Planning Committee

Northern Trust, N.A.
Trust Law Committee

Business Valuation Analysts
Probate and Trust Litigation

**Minutes, Real Property, Probate and Trust Law Section
Executive Council Meeting**

November 6, 2010

Sandpearl – Clearwater

References in these minutes to specified pages of “agenda materials” are to the agenda of the November 6, 2010, meeting of the Executive Council posted at the RPPTL website

AGENDA

I. Call to Order - Brian J. Felcoski, Chair

Brian called the meeting to order at 10:00 a.m.

II. Attendance - Debra L. Boje, Secretary

The attendance roster was circulated to be initialed by Council members in attendance at the meeting. Attendance is shown cumulatively on circulated attendance rosters. Debbie reminded the Council members that it is the responsibility of each member to record his or her own attendance on the roster and to promptly bring any corrections to the attention of the Secretary. The cumulative attendance roster to date for the 2010-2011 Bar year is attached to these Minutes as **Exhibit A**.

III. Minutes of Previous Meeting - Debra L. Boje, Secretary

The Minutes of the Executive Council Meeting held in Orlando, Florida on September 25, 2010, included at pages 12-26 of the agenda materials were corrected to reflect the attendance of Laird Lile, Fred Jones and Patricia P. Jones. In all other respects, the minutes were approved without change.

IV. Chair's Report - Brian J. Felcoski, Chair

1. Brian welcomed all in attendance. Brian reviewed the day's activities and the remaining dates and locations of the Executive Council meetings for 2010-2011, appearing on page 65 of the agenda materials. Brian advised those attending the meeting in Santa Barbara that the event sign-up sheet would be coming out soon and that it was important to sign up early as some events are limited.

Brian announced that a new Ad Hoc Committee was being formed to be known as the Foreclosure Reform Ad Hoc Committee. The purpose of this committee will be to draft legislation to improve foreclosure procedures

and to advise the Section and provide a resource to the Legislature (if requested) on issues relating to the foreclosure moratoria announced by many of the residential mortgage lenders and servicers.

2. Brian thanked the sponsors for their continued support and sponsorship of the activities associated with the Executive Counsel.
3. Brian advised members that Mike Dribin will not be able to be in attendance at today's meeting because his father had a stroke last night and he had to return home. Brian asked members to keep Mike Dribin's father in their thoughts and prayers.
4. Brian advised that Thomas P. Evans had passed away on October 27, 2010. Tom was Chairman of Section's Practice Steering Committee from 1964-1966. Brian asked that we keep Tom's family in our thoughts and prayers.
5. Brian advised that Gwynne Young has announced her candidacy for Florida Bar President. Brian asked Gwynne to stand up and be recognized. Gwynne thanked Section members for its tremendous support. She expressed her appreciation to all.
6. Brian thanked the Florida Bar Foundation, US Trust, and Stewart Title for their co-sponsorship of the Executive Council luncheon. Representatives from each company were invited to the podium to provide brief remarks.
7. Tim Bachmeyer, Director of Development, for the Florida Bar Foundation thanked the Section for its donation from the sales of its commemorative cookbooks in recognition of Liz Smith. Sandy Diamond advised that the final donation was anticipated to be \$1300.

V. Chair-Elect's Report – George J. Meyer, Chair-Elect

1. George reviewed the schedule of Executive Council meetings for 2011-2012, appearing on page 66 of the agenda materials. George advised that information for the out of state meeting in Prague had been circulated via e-mail. He strongly urged those wishing to attend to make their room reservations and flight reservations.

VI. Liaison with Board of Governors Report - Daniel L. DeCubellis

Dan referred the Council to the summary of the October 1, 2010, meeting in New Orleans of the Board of Governors which is included as a supplement to the agenda materials. A copy is attached as **Exhibit B**.

Dan advised that the Board is working on software to help attorneys comply with the rules regulating trust accounts. It is hoped this software will help reduce the number of errors. Dan advised that the application period for appointment to the Joint Committee between the Florida Association of Realtors and the Florida Bar has now expired and appointments would be made in December. Applications for appointment of Board of Directors positions to the Florida Bar Foundation expire on December 15, 2010. Those interested were encourage to apply. Dan reminded Council members that they should feel free to call him anytime with questions they may have.

VII. Treasurer's Report – Michael A. Dribin, Treasurer

In Mike's absence, Brian referred Council members to Mike's treasurer's report appearing on pages 67- 77 of the agenda materials. Those with questions were invited to either call or e-mail Mike.

VIII. Circuit Representative's Report - Andrew O'Malley, Director

Drew advised that the circuit representatives met on Friday, November 5, 2010. The Wills on Wheels pilot project was discussed. Phil Baumann, attended on behalf of the Diversity and Membership Committees and asked for circuit representatives to serve as liaisons. At the meeting, the problem study committee presented its report on the proposed transition from circuit representatives to members at large. The report included suggested organization and responsibilities for the Members at Large. Drew thanked the problem study committee for its hard work and also advised that the committee had made a proposal that instead of being referred to as "members-at-large," that members be referred to "at-large-members". This would allow them to use the acronym, "alarms."

1. First Circuit – W. Christopher Hart; Colleen Coffield Sachs
2. Second Circuit – J. Breck Brannen; Sarah S. Butters; John T. Lajoie
3. Third Circuit – John J. Kendron; Guy W. Norris; Michael S. Smith; Clay Alan Schnitker
4. Fourth Circuit – Roger W. Cruce; Brenda Ezell
5. Fifth Circuit – Del G. Potter; Arlene C. Udick
6. Sixth Circuit – Robert N. Altman; Gary L. Davis; Joseph W. Fleece, III; George W. Lange, Jr.; Sherri M. Stinson; Kenneth E. Thornton; Hugh C. Umstead; Richard Williams, Jr.
7. Seventh Circuit – Sean W. Kelley; Michael A. Pyle; Richard W. Taylor; Jerry B. Wells
8. Eighth Circuit – John Frederick Roscow, IV; Richard M. White Jr., Jeffrey Dollinger
9. Ninth Circuit – David J. Akins; Amber J. Johnson; Stacy A. Prince; Joel H. Sharp Jr.; Charles D. Wilder; G. Charles Wohlust
10. Tenth Circuit – Sandra Graham Sheets; Robert S. Swaine; Craig A. Mundy

11. Eleventh Circuit – Carlos A. Battle; Raul Ballaga; Aniella Gonzalez; Thomas M. Karr; Patrick J. Lannon; Marsha G. Madorsky; William T. Muir; Hung Nguyen; Adrienne Frischberg Promoff; Eric Virgil
12. Twelfth Circuit – Kimberly A. Bald; Michael L. Foreman; P. Allen Schofield
13. Thirteenth Circuit – Lynwood F. Arnold, Jr.; Michael A. Bedke; Thomas N. Henderson; Wilhelmina F. Kightlinger; Christian F. O’Ryan; William R. Platt; R. James Robbins; Stephen H. Reynolds; Susan K. Spurgeon
14. Fourteenth Circuit – Brian Leebrick
15. Fifteenth Circuit – Elaine M. Bucher; Glen M. Mednick; Robert M. Schwartz
16. Sixteenth Circuit – Julie A. Garber
17. Seventeenth Circuit – Robert B. Judd; Shane Kelley; Alexandra V. Rieman
18. Eighteenth Circuit – Jerry W. Allender; Steven C. Allender; Stephen P. Heuston
19. Nineteenth Circuit – Jane L. Cornett
20. Twentieth Circuit – Sam W. Boone; John T. Cardillo; Michael T. Hayes; Alan S. Kotler; Jon Scuderi; D. Keith Wickenden

IX. Probate and Trust Law Division – *Wm. Fletcher Belcher, Probate and Trust Law Division*

Information Items

1. Laird A. Lile, as Liaison to the Clerks of the Circuit Court, reported on the duties imposed upon attorneys by new Florida Rule of Judicial Administration 2.420(d) (effective 10-1-10). The new rule puts an affirmative duty on attorneys to identify confidential information contained in papers filed in a Florida court. A supplemental handout was provided, which is attached to these minutes as **Exhibit C**.
2. Fletch reviewed the Proposed Advisory Opinion 10-03 (9-24-10) appearing at pages 78-82 of the agenda materials from the Professional Ethics Committee of The Florida Bar, on the issue of ethical obligations of an attorney when a personal representative, beneficiaries, or heirs-at-law of a decedent, or their attorney, request confidential information. Fletch advised that the Section did review the Opinion and participated in the discussions that took place in the drafting of the Opinion. The deadline for providing comments to the Opinion is November 15, 2010. Fletch thanked Barry for his past contributions and summaries of the topic that were used as a template of the Opinion.
3. Fletch reported on the status of the work of the Ad Hoc Committee on Creditors’ Rights to Non-Exempt, Non-Probate Assets. Based upon a straw vote taken at the Probate Roundtable, the Committee is going to continue its efforts.

Action Items

1. **IRA, Insurance & Employee Benefits Committee** – *Linda Suzanne Griffin and L. Howard Payne, Co-Chairs*

On behalf of the committee Linda presented proposed legislation to further clarify that an inherited IRA account, as defined in s. 408(c)(3) of the Internal Revenue Code, is a fund or account exempt from claims of creditors of the owner, beneficiary, or participant. The statutory wording, a White Paper, and Legislative Request appears at pages 83-91 of the agenda materials. A handout was circulated that modified the statutory wording. The handout containing the modified statutory wording is attached to these minutes as **Exhibit D**. The Committee's motion to approve the proposed legislation, as modified, in the supplemental materials was approved. The Committee's motions to find such action to be within the purview of the Section and to authorize the expenditure of Section funds in support of that position were also unanimously approved.

2. **Probate & Trust Litigation Committee** – *William T. Hennessey III, Chair*

On behalf of the Committee, Bill presented proposed legislation to clarify that revocation of a will or trust is subject to challenge on the grounds of fraud, duress, mistake or undue influence after the death of the testator or settlor the same as the creation of a will or trust is subject to challenge. The statutory wording, a White Paper, and Legislative Request appears at pages 92 - 102 of the agenda materials. Bill circulated a supplement to the material that added revisions to Section 744.441. A copy of the supplement is attached to these minutes as **Exhibit E**. Chip Waller moved that the Committee's motion be amended to remove the revisions to Section 744.411. The motion to amend was seconded. Sean Kelley explained the guardianship committee's concerns as to why the revision to Section 744.441 was necessary to prevent a flood of pre-death will contests at the cost of a Ward. The motion to amend the Committee's motion failed. The Committee's motion to approve the proposed legislation, including revisions to section 744.441, was unanimously approved. The Committee's motion to find such action to be within the purview of the Section and to authorize the expenditure of Section funds in support of that position also were unanimously approved.

3. **Probate Law & Procedure Committee** – *Tae Kelley Bronner, Chair*

On behalf of the Committee, Tae presented proposed legislation to clarify and provide additional guidance with respect to a decedent's right to control the disposition of his or her remains and, absent specific directions

from a decedent, determining the person who is legally authorized to make decisions regarding the place and manner of disposition of a decedent's remains. The statutory wording, a White Paper, and Legislative Request appears at pages 103-120 of the agenda materials. Tae provided a brief explanation of the history of the proposed legislation. The Committee's motion to approve the proposed legislation was unanimously approved. The Committee's motion to find such action to be within the purview of the Section and to authorize the expenditure of Section funds in support of that position also were unanimously approved.

4. **Probate Law & Procedure Committee** – *Tae Kelley Bronner, Chair*

On behalf of the Committee, Tae presented proposed legislation that permits judicial reformation and modification of wills, and provides for an award of taxable fees and costs, including attorneys fees and guardian ad litem fees, in such actions. The statutory wording, a White Paper, and Legislative Request appears at pages 121-135 of the agenda materials. The Committee's motion to approve the proposed legislation was unanimously approved. The Committee's motion to find such action to be within the purview of the Section and to authorize the expenditure of Section funds in support of that position also were unanimously approved.

X. **Real Property Division** — *Margaret A. Rolando , Real Property Division Director*

Information Items

1. **Private Transfer Fee Covenants.** Peggy reminded members that as previously reported, on August 16th, the Federal Housing Finance Agency (FHFA) issued a proposed "Guidance on Private Transfer Fee Covenants" to the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal Home Loan Banks which would effectively prohibit them from dealing with mortgages on properties encumbered by private transfer fee covenants. The proposed Guidelines would prohibit Fannie Mae and Freddie Mac from purchasing or investing in any mortgages on property encumbered by private transfer fee covenants, and would prohibit the banks from purchasing or investing in any such mortgages or holding such mortgages as collateral.

Peggy advised that the Section had drafted and successfully lobbied for the passage of Section 689.28 in 2008, which prohibits private transfer fee covenants, but makes exceptions for transfer fees paid to condominium associations, homeowner's associations, and nonprofit or charitable

organizations for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities benefiting the community subject to the covenant. Unlike Section 689.28, which was prospective in application, the FHFA Guidelines would apply to existing transfer fees and likely would have a substantial negative impact on sales of new and existing homes and condominium units subject to "good" transfer fees because lenders will not provide mortgages on property in communities with these covenants when the loans cannot be sold into the secondary market controlled by Fannie Mae and Freddie Mac.

Peggy advised that the Condominium and Planned Development Committee and Real Estate Problem Study Committee prepared a letter on behalf of the Section, which commented on the proposed Guidelines and recommended Section 689.28, as an example of an effective, balanced approach. A copy of the letter of the letter appears at page 173-178 of the agenda materials. The Committee on an emergency basis recommended that the letter be submitted to the FHFA. The Executive Committee approved the sending of the letter on behalf of the Section.

2. **Foreclosure Reform Ad Hoc Committee.** [Note: Brian announced the formation of this Committee in his report.]
3. **Confidential Information Contained in Papers filed in a Florida Court.** [Note: addressed by Laird Lile as part of Probate and Trust Law Division Information Items.]

Action Item

1. **Title Issues and Standards Committee – Patricia P. Hendricks Jones, Chair**

Pat reported, on behalf of the Committee, on the proposed revisions to the standards in Chapter 17 of the Uniform Title Standards – Marketable Record Title Act, appearing at pages 136-164 of the agenda materials.

The Committee's motion to approve the changes to the title standards in Chapter 17, as reflected in the agenda materials at pages 136-164, was unanimously approved.

2. **Condominium and Planned Development Committee – Robert S. Freedman, Chair**

On behalf of the Committee, Rob presented proposed legislation to amend Section 718.117, to accommodate partial terminations of condominiums more effectively and to clarify certain ambiguities in the current statute posed by partial terminations. The statutory wording, a White Paper, and

Legislative Request appears at pages 165-172 of the agenda materials. The Committee's motion to approve the proposed legislation was unanimously approved. The Committee's motion to find such action to be within the purview of the Section and to authorize the expenditure of Section funds in support of that position also were unanimously approved.

3. **Land Trust Committee** – *Susan Katherine Frazier, Chair*

Peggy announced that this item was being deferred.

XI. General Standing Committee — *George J. Meyer, Director and Chair-Elect*

1. **Budget Committee** – *Michael A. Dribin, Chair*

In Mike's absence, Peggy presented the Committee's report which was circulated as a separate e-mail to Council members which is attached to these members as **Exhibit F**. Overall, anticipated revenue is anticipated to be \$896,460. The 3 primary sources of revenue continue to be sponsorship, CLE and dues. Anticipated expenses are \$959,648. Thus, there is an anticipated deficit. Council members were warned not to be alarmed. The Committee made a very conservative revenue projection. Peggy advised that Pam Price was available to answer any questions regarding the proposed budget. The Committee's motion to approve the budget for 2011-2012 was approved.

2. **Special Report on Mandatory Paralegal Regulations** – *Sandra Diamond. Sandy.* Sandy reported that as of now, 4049 paralegals have voluntarily registered. The grandfathering period for registration expires on March 1, 2011. What will happen to the status of unregistered paralegals has not been decided.

XII. General Standing Committee Reports – *George J. Meyer, Director and Chair-Elect*

1. **Actionline** – J. Richard Caskey, Chair; Scott P. Pence and Rose M. LaFemina, Co-Vice Chairs
2. **Amicus Coordination** – Robert W. Goldman, John W. Little, III and Kenneth B. Bell Co-Chairs
3. **Budget** – Michael A. Dribin, Chair; Pamela O. Price, Vice Chair
4. **Bylaws** – W. Fletcher Belcher, Chair

Fletch advised that the Bylaws Committee met and proposed an amendment to the Bylaws that would change the name of the "Members-At-Large" to At-Large-Members. Fletch made a motion to waive the

notice rules. The motion to waive was approved. Fletch then made his motion to amend the Bylaws to substitute the term "At-Large-Members" for "Members-At-Large" throughout the Bylaws. The motion was approved.

5. **CLE Seminar Coordination** – Deborah P. Goodall, Chair; Sancha B. Whynot, Laura Sundberg and Sylvia B. Rojas, Co-Vice Chairs

Debbie reviewed the 2010 – 2011 CLE Schedule appearing at page 179 of the agenda materials. Debbie thanked all those who have in the past and who continue to volunteer as speakers.

6. **2011 Convention Coordinator** – S. Katherine Frazier and Jon Scuderi, Co Chairs Michael A. Dribin, Vice Chair.

Katherine gave the report of the Committee.

7. **Fellowship** – Michael A. Bedke, Chair; Tae Kelley Bronner and Phillip Baumann, Co-Vice Chairs

Michael presented the report of the Committee. Michael called upon John Neukamm to identify by name each of the 2010 Fellows. John was awarded a prize for having correctly identified Benjamin Bush, Elisa Lucchi, Theodore Kypreos, and Narvin R Pasem.

8. **Florida Bar Journal** – Kristen M. Lynch, Chair Probate Division; William P. Sklar, Chair Real Property Division

9. **Legislative Review** – Michael J. Gelfand, Chair; Alan B. Fields and Barry F. Spivey, Co-Vice Chairs.

Michael advised that for those who attended the Legislative Drafting Workshop at the last meeting, the CLE credit information could be found at page 180 of the agenda materials.

Mike advised that Alan Fields was going to be replaced by Katherine Frazier as Co-Vice Chair of the Committee.

Michael advised that there are more than 12 action items currently in the hopper and it was going to be another active year.

10. **Legislative Update 2011** – Robert S. Swaine, Chair; Stuart H. Altman, Charles I. Nash, and R. James Robbins, Co-Vice Chairs

11. **Liaison Committees:**

A. **ABA:** Edward F. Koren; Julius J. Zschau

Ed reported that the status of the tax laws continue to be up in the air. He also advised that the ABA was looking at ways to address the foreclosure crisis.

- B. **BLSE:** Michael C. Sasso, W. Theodore Conner, David M. Silberstein, Anne Buzby-Walt.

Mike advised that the Committee met last week. He advised that attorneys are now allowed to indicate on the signature block of pleadings if they are board certified. He advised that the Committee is considering additional areas for certification.

- C. **Business Law Section:** Marsha G. Rydberg
- D. **BOG:** Daniel L. DeCubellis
- E. **CLE Committee:** Deborah P. Goodall
- F. **Clerks of the Circuit Court:** Laird A. Lile
- G. **Council of Sections:** Brian J. Felcoski and George J. Meyer
- H. **FLEA / FLSSI:** David C. Brennan; John Arthur Jones; Roland Chip Waller
- I. **Florida Bankers:** Stewart Andrew Marshall, III; Mark T. Middlebrook
- J. **Judiciary:** Judge Jack St. Arnold, Judge Gerald B. Cope, Jr., Judge George W. Greer; Judge Melvin B. Grossman; Judge Hugh D. Hayes; Judge Claudia Rickert Isom, Judge Maria M. Korvick; Judge Beth Krier, Judge Lauren Laughlin; Judge Celeste H. Muir; Judge Robert Pleus; Judge Richard Suarez; Judge Morris Silberman; Judge Patricia V. Thomas; Judge Walter L. Schafer, Jr.
- K. **Law Schools:** Frederick R. Dudley, Stacy O. Kalmanson, and Professor James J. Brown
- L. **Out of State:** Michael P. Stafford; John E. Fitzgerald, Jr., Gerard J. Flood

- 12. **Long Range Planning Committee** – George J. Meyer, Chair

George advised that an e-mail would be sent soon for the next meeting which would be in January or February.

- 13. **Member Communications and Information Technology** – Alfred A. Colby, Chair; S. Dresden Brunner and Nicole C. Kibert, Co – Vice Chair
- 14. **Membership Services** – Phillip A. Baumann, Chair; Mary E. Karr, Vice Chair

Phil provided a joint report for Membership Services, Membership Diversity and Mentoring. Phil asked if Council members would please

advise him of any local groups that would benefit from a Section liaison attending one of its meetings.

15. **Membership Diversity Committee** – Lynwood T. Arnold, Jr., and Fabienne E. Fahnestock, Co-Chairs; Karen Gabbadon, Vice-Chair
16. **Mentoring** – Guy S. Emerich, Chair; Jerry E. Aron and Keith S. Kromash, Co-Vice Chairs
17. **Meeting Planning Committee** – John Nuekamm, Chair

John advised that the Committee met on Thursday. One of the Committee's goals is to formulate a standard system for contracts. He also advised that the Committee is currently planning Fletch's 2012-2013 year.

18. **Model and Uniform Acts** – Bruce M. Stone and S. Katherine Frazier, Co-Chairs

Katherine advised that the Committee continues to monitor uniform actions. If you learn of an new act please let her know.

19. **Professionalism & Ethics** – Lee A. Weintraub, Chair; Paul E. Roman and Lawrence J. Miler, Co-Vice Chairs.

Lee advised that a new program is going to be rolled out known as "scare." Scare will present real life situations and ethical issues. The Committee is also developing a program for civics classes that can be used by local public schools.

20. **Pro Bono** – Gwynne A. Young and Adele I. Stone, Co Chair; Tasha K. Pepper-Dickinson, Vice Chair

Gwynne advised that the Wills on Wheels program is moving forward and the pilot program will begin in Palm Beach.

21. **Sponsor Coordinators** – Kristen M. Lynch, Chair; Wilhelmina Kightlinger, Jon Scuderi, J. Michael Swaine, Adele I. Stone, Marilyn M. Polsen, Co-Vice Chairs

Kristin reminded members to thank sponsors and use their services whenever possible. She advised that there is only one general sponsorships slot left for a financial institution and only two slots open for title companies. The Committee is looking into creating a new class of sponsorship. Committee sponsorship on the Real Property Division side is going to be a goal of the Committee for the upcoming year. The

Committee is also working on finding a sponsor for the Diversity committee.

At the end of the report George Meyer thanks Kristin and her Committee for all of its hard work.

22. **Strategic Planning** – George J. Meyer, Chair

XIII. Probate and Trust Law Division Committee Reports - Wm. Fletcher Belcher - Director

1. **Ad Hoc Committee on Creditors' Rights to Non-Exempt, Non-Probate Assets** – Angela M. Adams, Chair
2. **Ad Hoc Committee on Jurisdiction and Service of Process** – Barry F. Spivey, Chair; Sean W. Kelley, Vice Chair
3. **Ad Hoc Study Committee on Estate Planning Attorney Conflict of Interest** - William T. Hennessey III, Chair
4. **Asset Preservation** – Jerome L. Wolf and Brian C. Sparks, Co-Chairs
5. **Attorney/Trust Officer Liaison Conference** – Robin J. King, Chair; Jack A. Falk, Jr., Vice Chair; Mark T. Middlebrook, Corporate Fiduciary Chair
6. **Estate and Trust Tax Planning** – Richard R. Gans, Chair; Harris L. Bonnette, Jr., and Elaine M. Bucher, Co-Vice Chairs
7. **Florida Electronic Court Filing** – Rohan Kelley, Chair; Laird A. Lile, Vice Chair
8. **Guardianship and Advance Directives** – Sean W. Kelley and Alexandra V. Rieman, Co-Chairs; Seth A. Marmor and Sherri M. Stinson, Co-Vice Chairs
9. **IRA, Insurance and Employee Benefits** – Linda Suzanne Griffin and L. Howard Payne, Co-Chairs; Rex E. Moule, Jr., Vice Chair
10. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Wolasky
11. **Liaisons with Tax Section** – Lauren Y. Detzel, William R. Lane, Jr., David Pratt; Brian C. Sparks and Donald R. Tescher

12. **Power of Attorney** – Tami F. Conetta, Chair; David R. Carlisle, Vice Chair
13. **Principal and Income** – Edward F. Koren, Chair
14. **Probate and Trust Litigation** – William T. Hennessey, III, Chair; Thomas M. Karr and Jon Scuderi, Co-Vice Chairs
15. **Probate Law and Procedure** – Tae Kelley Bronner, Chair; S. Dresden Brunner, Anne Buzby-Walt and Jeffrey S. Goethe, Co-Vice Chairs
16. **Trust Law** – Shane Kelley, Chair; Angela M. Adams, John C. Moran and Laura P. Stephenson, Co-Vice Chairs
17. **Wills, Trusts and Estates Certification Review Course** – Anne Buzby-Walt, Chair; Deborah L. Russell, Vice Chair

XIV. Real Property Division Committee Reports

1. **Condominium and Planned Development** – Robert S. Freedman, Co-Chair; Steven Mezer, Co-Chair; Jane Cornett, Vice-Chair
2. **Construction Law** – Brian Wolf, Chair; Hardy Roberts and Arnold Tritt, Co Vice-Chairs
3. **Construction Law Institute** – Wm. Cary Wright, Chair; Michelle Reddin and Reese Henderson, Co-Vice Chairs
4. **Construction Law Certification Review Course** – Kim Ashby, Chair; Bruce Alexander and Melinda Gentile, Co Vice-Chair
5. **Governmental Regulation of Real Estate** – Eleanor Taft, Chair; Nicole Kibert, Kristen Brundage and Frank L. Hearne, Co Vice-Chairs
6. **Residential Real Estate Committee and Industry Liaison** – Frederick Jones, Chair; William J. Haley, Vice Chair
7. **Land Trusts** – S. Katherine Frazier, Chair; Wilhelmena Kightlinger, Vice Chair
8. **Landlord and Tenant** – Neil Shoter, Chair; Scott Frank, Vice Chair
9. **Legal Opinions** – David R. Brittain and Roger A. Larson, Co Chairs; Burt Bruton, Vice Chair

10. **Liaisons with FLTA** – Norwood Gay and Alan McCall Co-Chairs; Barry Scholnik, John S. Elzeer, Joe Reinhardt, James C. Russick, Lee Huzagh, Co-Vice Chairs
11. **Mortgages and Other Encumbrances** – Salome Zikakis, Chair; Robert Stern, Co-Vice Chair
12. **Real Estate Certification Review Course** – Ted Conner, Chair; Guy W. Norris and Raul Ballaga, Co-Vice Chairs
13. **Real Property Forms** – Homer Duval, III, Chair; Jeffrey T. Sauer and Arthur Menor, Vice Chairs
14. **Real Property Insurance** – Jay D. Mussman, Chair; Andrea Northrop and Wm. Cary Wright, Co-Vice Chairs
15. **Real Property Litigation** – Mark A. Brown, Chair; Eugene E. Shuey and Martin Awerbach, Co-Vice Chairs
16. **Real Property Problems Study** – Wayne Sobien, Chair; Jeanne Murphy and Pat J. Hancock, Co-Vice Chair.
17. **Title Insurance & Title Insurance Liaison** – Melissa Murphy, Chair; Homer Duvall and Kristopher Fernandez, Co-Vice Chairs.
18. **Title Issues and Standards** – Patricia Jones, Chair; Robert Graham, Karla Gray and Christopher Smart, Co-Vice Chairs

XV. Adjourn -- There being no further business to come before the Executive Council, the meeting was adjourned at approximately 12:00 p.m.

Respectfully submitted,

Debra L. Boje, Secretary

ATTENDANCE ROSTER

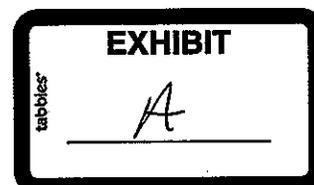
REAL PROPERTY PROBATE & TRUST LAW SECTION EXECUTIVE COUNCIL MEETINGS 2010 – 2011

Executive Committee	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Felcoski, Brian J., Chair	X	X	X		
Meyer, George J., Chair-Elect	X	X	X		
Belcher, Wm. Fletcher, Probate & Trust Law Div. Director	X	X	X		
Rolando, Margaret A., Real Property Law Div. Director	X	X	X		
Boje, Debra L., Secretary	X	X	X		
Dribin, Michael A., Treasurer	X	X			
Gelfand, Michael J., Legislation Chair	X	X	X		
Goodall, Deborah, Seminar Coordinator	X	X	X		
O'Malley, Andrew M., Director of Circuit Representatives	X	X	X		
Neukamm, John B., Immediate Past Chair	X	X	X		

Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Adams, Angela M.	X	X	X		
Adcock, Jr., Louie N., Past Chair					
Akins, David James	X	X	X		
Alexander, Bruce					
Allender, Jerry W.	X				
Allender, Steven C.	X				
Altman, Robert N.	X		X		
Altman, Stuart H.	X	X	X		

RM:7797410:1

57458-2



Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Arnold, Jr. , Lynwood F.	X	X			
Aron, Jerry E., Past Chair	X	X	X		
Ashby, Kimberly		X			
Atkins, April					
Awerbach, Martin	X	X	X		
Bald, Kimberly	X	X	X		
Ballaga, Raul P.	X	X			
Banister, John R.	X	X			
Battle, Carlos Alberto	X	X	X		
Baumann, Phillip A.	X	X	X		
Beales III, Walter Randolph, Past Chair	X				
Bedke, Michael	X	X	X		
Bell, Honorable Kenneth					
Bonnette, Jr., Harris L.	X	X	X		
Boone, Jr., Sam Wood	X	X			
Brannen, J. Brecken					
Brennan, David Clark, Past Chair	X	X			
Brittain, David Ross	X	X	X		
Bronner, Tae Kelley	X	X	X		
Brown, J.J.					
Brown, Mark A.	X	X	X		
Brundage, Kristen Blaine Parker					
Brunner, S. Dresden	X	X			
Bruton, Jr., Burt	X	X	X		
Bucher, Elaine M.	X	X	X		
Butters, Sarah		X	X		
Buzby, Anne K.		X	X		
Cardillo, John T.		X			
Carlisle, David Russell	X	X	X		

RM:7797410:1

57458-2

Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Caskey, J. Richard	X	X			
Christiansen, Pat, Past Chair	X	X	X		
Colby, Alfred		X			
Conetta, Tami Foley	X	X	X		
Conner, William Theodore			X		
Cope, Honorable Gerald B., Jr.	X				
Cornett, Jane L.		X			
Cruce, Roger W.	X		X		
Davis, Gary	X				
DeCubellis, Dan L.	X	X	X		
Detzel, Lauren Y.	X	X	X		
Diamond, Sandra F., Past Chair	X	X	X		
Dickinson, Tasha	X	X			
Dollinger, Jeffrey		X	X		
Dudley, Frederick Raymond	X	X	X		
Duvall III, Homer		X	X		
Elzeer, John S.	X	X	X		
Emerich, Guy Storms	X	X			
Ezell, Brenda B.	X	X	X		
Falk, Jack A.	X	X	X		
Fahnestock, Fabienne E.	X				
Fernandez, Kristopher	X	X	X		
Fields, Alan Beaumont	X	X	X		
Fitzgerald, Jr., John Edward	X		X		
Fleece III, Joseph W.	X	X	X		
Flood, Gerard J.	X	X	X		
Foreman, Michael Loren	X	X			
Frazier, Susan Katherine	X	X	X		
Freedman, Robert Scott	X	X	X		
Gabbadon, Karen					

RM:7797410:1

57458-2

Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Gans, Richard Roy	X	X			
Garber, Julie Ann					
Gay III, Robert Norwood	X				
Gentile, Melinda					
Goethe, Jeffrey	X	X	X		
Goldman, Robert W., Past Chair	X		X		
Gonzalez, Aniella	X	X			
Graham, Robert Manuel	X	X	X		
Gray, Karla S.	X				
Greer, Honorable George W.					
Griffin, Linda S.	X	X	X		
Grimsley, John Gall, Past Chair					
Grossman, Honorable Melvin B.	X	X			
Guttmann III, Louis B., Past Chair		X			
Haley, William James					
Hancock, Patricia J.	X	X			
Hart, W. Christopher	X	X	X		
Hayes, Honorable Hugh D.	X		X		
Hayes, M. Travis	X	X	X		
Hearn, Steven Lee, Past Chair		X			
Hearne, Frank L.	X	X	X		
Henderson, Reese		X	X		
Henderson, Thomas	X	X	X		
Hennessey III, William Thomas	X	X			
Heuston, Stephen Paul	X	X	X		
Huszagh, Victor Lee					
Isom, Honorable Claudia Rickert					
Isphording, Roger O., Past Chair	X	X	X		
Johnson, Amber Jade F.	X	X	X		

RM:7797410:1

57458-2

Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Jones, Frederick Wayne	X	X	X		
Jones, John Arthur, Past Chair		X	X		
Jones, Patricia P. Hendricks	X	X	X		
Judd, Robert Brian	X	X			
Kalmanson, Stacy O.	X	X	X		
Karr, Mary		X			
Karr, Thomas M.		X			
Kayser, Joan Bradbury, Past Chair		X			
Kelley, Rohan, Past Chair	X	X			
Kelley, Sean	X	X	X		
Kelley, Shane	X	X	X		
Kendon, John		X	X		
Kibert, Nicole C.	X	X	X		
Kightlinger, Wilhelmina F.	X	X	X		
King, Robin	X	X	X		
Kinsolving, Ruth Barnes, Past Chair			X		
Koren, Edward F., Past Chair			X		
Korvick, Honorable Maria Marinello	X	X			
Kotler, A. Stephen	X	X	X		
Krier, Honorable Beth					
Kromash, Keith Stuart	X	X	X		
LaFemina, Rose	X		X		
Lajoie, John Thomas					
Lane, William	X	X	X		
Lange, Jr., George W.	X	X	X		
Lannon, Patrick	X	X	X		
Larson, Roger Allen	X	X			
Laughlin, Honorable Lauren					
Leebrick, Brian	X	X			
Lile, Laird, Past Chair		X	X		

RM:7797410:1

57458-2

Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Little III, John Wesley	X		X		
Lynch, Kristen M.	X	X	X		
Madorsky, Marsha G.	X	X	X		
Marger, Bruce, Past Chair	X				
Marmor, Seth		X			
Marshall III, Stewart Andrew		X	X		
McCall, Alan K.	X	X	X		
Mednick, Glenn M.	X		X		
Menor, Arthur James	X	X	X		
Mezer, Steven H.	X	X	X		
Middlebrook, Mark Thomas	X	X	X		
Miller, Lawrence Jay		X	X		
Moran, John	X	X	X		
Moule, Rex E.	X		X		
Muir, Honorable Celeste	X	X			
Muir, William T.	X		X		
Mundy, Craig A.	X				
Murphy, Melissa, Past Chair	X	X			
Murphy, Jeanne			X		
Mussman, Jay D.	X	X	X		
Nash, Charles Ian	X	X	X		
Nguyen, Hung V.		X			
Norris, Guy W.	X	X	X		
Northrop, Andrea	X				
Norris, John E., Past Chair		X			
O'Ryan, Christian Felix	X	X			
Payne, L. Howard		X	X		
Pence, Scott	X				
Platt, William R.	X		X		
Pleus, Jr., Honorable Robert James					

RM:7797410:1

57458-2

Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Polson, Marilyn Mewha	X	X	X		
Potter, Del G.					
Pratt, David		X	X		
Promoff, Adrienne F.	X				
Price, Pamela O.	X	X	X		
Prince-Troutman, Stacy A.	X	X			
Pyle, Michael A.	X	X	X		
Reddin, Michelle A.		X			
Reinhardt, Joe					
Reynolds, Stephen			X		
Rieman, Alexandra V.	X	X	X		
Robbins, James, Jr.	X	X	X		
Roberts, Hardy		X	X		
Robinson, Charles F.	X	X	X		
Rojas, Silvia B.	X	X	X		
Roman, Paul	X	X			
Roscow IV, John Frederick	X				
Russell, Deborah L.	X	X	X		
Russick, James C.	X	X	X		
Rydberg, Marsha G.	X	X	X		
Sachs, Colleen Coffield	X	X			
Sasso, Michael Cornelius		X			
Sauer, Jeffrey Thomas	X	X			
Schaefer, Jr. , Honorable Walter L.					
Schnitker, Clay	X				
Schofield, Percy Allen	X	X	X		
Scholnik, Barry	X				
Schwartz, Robert M.		X	X		
Scuderi, Jon	X	X	X		
Sheets, Sandra Graham	X	X			

RM:7797410:1

57458-2

Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Shoter, Neil	X	X	X		
Shuey, Eugene Earl	X	X	X		
Silberman, Honorable Morris					
Silberstein, David Mark	X	X	X		
Sklar, William Paul	X				
Smart, Christopher	X				
Smith, G. Thomas, Past Chair	X	X	X		
Smith, Michael S.		X			
Smith, Wilson, Past Chair					
Sobien, Wayne	X	X			
Sparks, Brian Curtis	X	X	X		
Spivey, Barry F.	X	X	X		
Spurgeon, Susan K.	X		X		
St. Arnold, Honorable Jack					
Stafford, Michael P.	X	X	X		
Stephenson, Laura P.	X	X	X		
Stern, Robert Gary	X	X	X		
Stinson, Sherri M.	X				
Stone, Adele Ilene	X	X	X		
Stone, Bruce M., Past Chair		X			
Suarez, Honorable Richard					
Sundberg, Laura K.	X	X	X		
Swaine, Jack Michael, Past Chair	X				
Swaine, Robert S.	X				
Taft, Eleanor W.		X	X		
Taylor, Richard W.	X	X			
Tescher, Donald Robert		X	X		
Thomas, Honorable Patricia Vitter	X		X		
Thornton, Kenneth E.	X	X	X		
Tritt, Arnold	X	X	X		

RM:7797410:1

57458-2

Executive Council Members	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Udick, Arlene	X	X	X		
Umsted, Hugh Charles	X		X		
Virgil, Eric	X		X		
Waller, Roland D., Past Chair	X	X	X		
Weintraub, Lee A.	X	X	X		
Wells, Jerry	X	X	X		
White, Jr.; Richard M.	X	X	X		
Whynot, Sancha Brennan	X	X	X		
Wickenden, D. Keith	X				
Wilder, Charles D.	X	X	X		
Williams, Jr., Richard	X	X			
Williamson, Julie Ann Stulce, Past Chair	X				
Wohlust, G. Charles	X	X	X		
Wolasky, Marjorie Ellen	X	X	X		
Wolf, Brian	X				
Wolf, Jerome Lee	X				
Wright, Wm. Cary	X	X	X		
Young, Gwynne Alice	X	X	X		
Zikakis, Salome	X	X	X		
Zschau, Julius Jay, Past Chair		X	X		
			X		
Legislative Consultants					
Adams, Gene	X	X	X		
Aubuchon, Joshua D.	X	X	X		
Dunbar, Peter M.	X	X			
Edenfield, Martha		X	X		

RM:7797410:1

57458-2

Executive Committee	Aug. 7 Palm Beach	Sept. 25 Orlando	Nov. 6 Clearwater	Feb. 26 Santa Barbara	May 28 Miami Beach
Guests and Fellows					
Armstrong, David G.	X				
Boyd, Deborah	X		X		
Brenes-Stahl, Tattiana		X			
Bush, Ben	X	X	X		
Byrnes, Gentry		X			
Callahan, Chad	X				
Cole, Stacey		X			
Fallon, Cynthia	X				
George, Joseph P.	X				
Godelia, Vinette			X		
Hailey, Phyllis	X				
Hale, Russ	X	X	X		
Hamrick, Alex		X			
Kypreos, Theo	X	X	X		
Lucchi, Elisa	X	X	X		
Marx, James	X				
Mirpuri, Shelley			X		
Pasem, Narvin	X	X	X		
Sibblies, Sharaine			X		
Stone, Andrea		X			
Stuart, Pam	X	X			
Thurlow, Thomas, III	X				
Topor, Thomas K.	X				
Winter, Christopher			X		

RM:7797410:1

57458-2

BOARD OF GOVERNORS REPORT

Dan DeCubellis, Board Liaison

At its October 1 meeting, The Florida Bar Board of Governors:

ELECTRONIC SERVICE OF CASE DOCUMENTS

Recommended approval of Rule of Judicial Administration 2.516, dealing with electronic service of case documents. The rule will be filed in the supreme court and there will be a comment period. It will be posted on The Florida Bar's website when the petition is filed.

REDACTION OF COURT FILINGS

Received a report on the New Rule 2.420 Seminar. It was the most downloaded/accessed program on LegalSpan in September. It explains the new rule on what information must be redacted in court filings as of October 1, 2010.

DIVERSITY

Discussed ways to continue to promote diversity in the profession beyond the Bar's new program to encourage local bars to pursue diversity. President Mayanne Downs and President-elect Scott Hawkins said they have talked with sections and committees about bringing in younger and diverse lawyers.

WITNESS FEES

Approved an amendment to Rule 4-3.4, which would allow paying a reasonable fee for someone who is retired for being a witness in a case.

BAR CAMPAIGNING

Voted to temporarily suspend Standing Board Policy 2.20 on campaigning for president-elect pending later confirmation of qualified candidates and further review of the ground rules for these elections.

BYLAWS

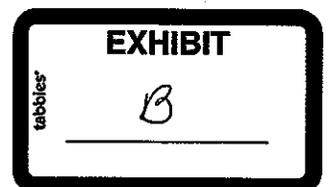
Heard that the Rules Committee is considering an amendment eliminating Bylaw 2-5.2, which allows any Bar member to propose a resolution to be considered at the General Assembly of the Bar's Annual Convention.

BUDGET

Heard a report from the budget committee that the unaudited financial statements for the Bar's fiscal year reflected improvements due in part to fiscally conservative actions by Bar management.

ECONOMY

Heard that in addition to its other efforts, the Program Evaluation Committee is studying what the Bar can do to help members hard hit by the current economic recession.



TRUST ACCOUNT RECORDS AND REPORTING

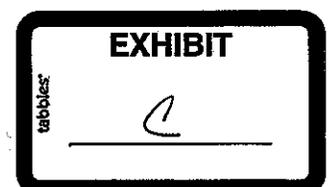
Heard that the Disciplinary Procedure Committee, in addition to working on forms and instructions to accurately reflect who in the law firm is responsible for properly maintaining trust account records, is considering computer software to help attorneys comply with the rules regulating trust accounts.

Real Property, Probate and Trust Law Section
Executive Council Meeting
November 6, 2010

Rule 2.420: So what?

Laird A. Lile

1. Rules of Judicial Administration: apply in all Florida courts. Fla. R. Jud. Admin. 2.110.
2. Sanctions
 - a. For attempts to treat information as confidential which are not made in good faith and not supported by sound legal or factual basis. Fla. R. Jud. Admin. 2.420(e)(6)(A)
 - b. For failing to protect confidential information. Fla. R. Jud. Admin. 2.420(e)(6)(B)
3. The public has access to all records of judicial branch except as specifically provided.
 - a. General rule: public has access to public records. Fla. R. Jud. Admin. 2.420(a)
 - b. Exception: confidential information. Fla. R. Jud. Admin. 2.420(c)
4. Responsibility of filer (including attorney): Notice or Motion (which is not confidential)
 - a. For automatic 19 listed in Rule, file Notice of Confidential Information within Court Filing, which must:
 - i. Indicate confidential information from the list of 19 is included in a document being filed and identify which of the 19 applies; and
 - ii. Identify the precise location of confidential information within that document. Fla. R. Jud. Admin. 2.420(d)(2)
 - iii. Form of Notice of Confidential Information within Court Filing is included in the Rule.
 - b. If not in list of 19, and if good faith belief that the document contains confidential information, file Motion to Determine Confidentiality of Court Records, which must:
 - i. Identify material alleged to be confidential, with specificity, but without disclosing information;
 - ii. Specify the bases for determining the information is confidential; and
 - iii. Set forth specific legal authority and applicable legal standard. Fla. R. Jud. Admin. 2.420(e)(1)
 - c. Service of Notice/Motion: on any party and on any affected non-party, with additional disclosure regarding impact of determination that information is not confidential. Fla. R. Jud. Admin. 2.420(d)(4) Affected non-party is any non-party identified by name in a court record that contains confidential information pertaining to that non-party. Fla. R. Jud. Admin. 2.420(b)(5)



5. Responsibility of clerk:
 - a. Notice of Confidential Information within Court Filing: initial determination of confidentiality. Fla. R. Jud. Admin. 2.420(d)(2)
 - b. Maintain confidentiality. Fla. R. Jud. Admin. 2.420(d)(1), (e)(1)
 - c. Publish an Order determining confidentiality. Fla. R. Jud. Admin. 2.420(e)(3)(H), (4)

6. Responsibility of court:
 - a. Determine promptly
 - b. Specificity in order, if determined to be confidential

7. Special process:
 - a. Criminal. Fla. R. Jud. Admin. 2.420(f)
 - b. Appellate. Fla. R. Jud. Admin. 2.420(g)

8. In what circumstances will this rule apply?
 - a. Notice of Confidential Information within Court Filing required for:
 - i. Social security numbers, bank account numbers, credit (or charge or debit) card numbers, generally only as of January 1, 2011. Fla. R. Jud. Admin. 2.420(d)(1)(B)(iii). But see, Fla. Stat. §119.0714(2).
 - ii. Birth and death certificates. Fla. R. Jud. Admin. 2.420(d)(1)(B)(vi)
 - iii. Probate inventory (regular, amended, supplemental, elective share). Fla. R. Jud. Admin. 2.420(d)(1)(B)(xi)
 - iv. Estate accountings. Fla. R. Jud. Admin. 2.420(d)(1)(B)(xi)
 - v. Guardianship reports and orders appointing court monitors. Fla. R. Jud. Admin. 2.420(d)(1)(B)(xv)
 - b. Motion to Determine Confidentiality of Court Records required for:
 - i. Everything else that is confidential. Defined in Fla. R. Jud. Admin. 2.420(b)(4)

9. Unintended consequences
 - a. Filer obtaining un-redacted copies of documents submitted
 - i. File stamped copies
 - ii. Orders
 - b. Additional court order

10. Continuing education: www.FlaBar.org.

A bill to be entitled

An act relating to individual retirement accounts amending s. 222.21(2)(c), Florida Statutes; clarifying the exemption of inherited individual retirement accounts from legal processes; providing an effective date.

WHEREAS, many residents of Florida have individual retirement accounts, relying upon the Legislature's intent that individual retirement accounts are intended to be exempt from claims of creditors;

WHEREAS, the Legislature clearly intended in s. 222.21(c), Florida Statutes, that inherited individual retirement accounts included in s. 402(c) of the Internal Revenue Code of 1986, as amended, be exempt from claims of creditors of the owner, beneficiary, or participant of the inherited individual retirement account;

WHEREAS, in *Robertson v. Deeb*, 16 So. 3d 936 (Fla. 2D DCA 2009) the appellate court, contrary to the Legislature's intent, held that an inherited individual retirement account was not exempt from the beneficiaries' creditors because such an account was not included in property described in s. 222.21, Florida Statutes, a decision that was followed in *In re Ann S. Ard*, 2010 WL 3400368 the Bankruptcy Court of the Middle District of Florida.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (2) of s. 222.21, Florida Statutes, is amended to read:

222.21. Exemption of pension money and certain tax-exempt funds or accounts from legal processes

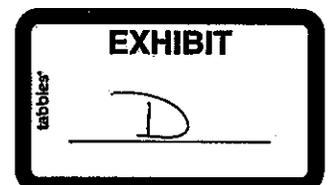
(c) Any money, ~~or other assets~~ or any interest in any fund or account that is exempt from claims of creditors of the owner, beneficiary, or participant under paragraph (a) does not cease to be exempt ~~qualify for exemption after the owner's death~~ by reason of a direct transfer or eligible rollover that is excluded from gross income under ~~s. 402(c)~~ of the Internal Revenue Code of 1986, as amended, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in s. 408(d)(3) of the Internal Revenue Code of 1986, as amended.

Section 2. This act shall take effect upon becoming law.

Section 3. These amendments to paragraph (c) of subsection (2) of s. 222.21, Florida Statutes, are intended to clarify existing law, are remedial in nature, and shall have retroactive application to all inherited individual retirement accounts without regard to the date they were created.

RM:6724080:1

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



744.441. Powers of guardian upon court approval

After obtaining approval of the court pursuant to a petition for authorization to act, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

...

(11) Prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the guardian in the performance of his or her duties. Before authorizing a guardian to bring an action described in s. 736.0207, the court shall first find that the action appears to be in the ward's best interests during the ward's probable lifetime. An action to prosecute or defend a claim of the ward's improper revocation of all or part of a trust in which the issues relate solely to a devise is not in the ward's best interests during the ward's probable lifetime. Nothing in this subsection shall preclude a challenge after the ward's death. If the court denies a request that a guardian be authorized to bring an action described in s. 736.0207, the court shall review the continued need for a guardian and the extent of the need for delegation of the ward's rights.

...



(*) SEE FOOTNOTE

	08-09 Actual	09-10 Actual	10-11 Budget	10-11 Projected Actual	11-12 Proposed Budget
Real Prop Probate & Trust Revenue	734,100	951,489	903,185	934,715	896,460
31431 Dues	470,700	459,250	465,000	465,000	460,000
31432 Affiliate Dues	1,950	3,000	1,750	1,750	1,750
31433 Dues-Retained TFB Ge	(165,547)	(161,963)	(163,450)	(158,100)	(163,450)
32191 CLE Courses	202,245	243,926	198,100	205,000	205,000
32293 Section Differential	31,150	29,063	35,000	28,450	28,500
34704 Actionline Advertisi	17,725	7,425	15,000	17,425	7,500
35201 Sponsorships	175,550	141,645	187,000	199,550	175,000
35603 Bd/Council Mtg Regis	0	67,634	120,000	132,000	132,000
38499 Investment Allocatio	(95,532)	85,549	44,785	43,640	50,160
Real Prop Probate & Trust Expense	691,907	734,332	936,016	956,273	959,648
71001 Telephone/Direct	0	1,361	1,200	1,375	1,375
71005 Internet Charges	243	1,128	1,100	830	830
36998 Credit Card Fees	1,884	2,511	3,700	3,000	3,000
84001 Postage	1,581	1,914	3,000	2,500	3,000
84002 Printing	857	123	1,500	1,500	1,500
84006 Newsletter	55,400	42,829	40,000	43,000	43,000
84009 Supplies	550	72	300	300	300
84010 Photocopying	283	272	500	500	500
84015 Officers Conference	0	310	1,200	1,200	1,200
84016 Scrivener	0	0	5,000	5,000	5,000
84051 Officers Travel Expe	1,072	359	3,000	3,000	3,000
84054 CLE Speaker Expense	4,762	2,990	4,500	4,500	4,500
84101 Committee Expenses	69,532	62,773	65,000	65,000	65,000
84106 Realtor Relations	2,150	2,150	5,000	5,000	5,000
84107 Diversity Initiative	5,438	2,775	15,000	15,000	15,000
84201 Board Or Council Mee	297,861	360,206	400,000	400,000	400,000
84216 Strategic Planning M	10,753	143	10,000	10,000	10,000
84238 Council Mtg Recreati	7,459	42,888	35,000	40,000	40,000
84239 Hospitality Suite	12,137	7,530	15,000	25,000	25,000
84279 Council Members Hand	3,924	2,831	3,500	3,500	3,500
84310 Law School Liaison	343	503	7,500	7,500	7,500
84322 Fellowships-Exc Cou	3,788	4,763	10,000	10,000	10,000
84422 Website	64,084	41,533	75,000	75,000	75,000
84501 Legislative Consulta	75,000	100,000	100,000	100,000	100,000
84503 Legislative Travel	32,305	12,335	20,000	20,000	20,000
84524 Memorial Tributes	124	46	500	500	500
84701 Council Of Sections	0	300	300	300	300
84998 Operating Reserve	0	0	85,092	84,923	84,923

(*)

The budget shows the Attorney-Trust Officer Conference as a "Selection service" event and the Construction Law Institute as a CLE event. Due to time constraints, the Budget Committee will ask that the Executive Council delegate to the Executive Committee of the Section the authority to amend the budget to change the treatment of either or both of these programs (or portions of them), in the event that the Executive Committee determines that doing so will be in the best interest of the Section.

EXHIBIT

F

	08-09 Actual	09-10 Actual	10-11 Budget	10-11 Projected Actual	11-12 Proposed Budget
Legislative Update Revenue	63,791	49,635	66,300	41,830	41,830
32006 Live Web Cast	8,500	7,000	8,750	11,250	11,250
32010 Legal Span On-line	4,292	5,850	750	1,000	1,000
32205 Compact Disc	31,989	16,215	28,800	10,080	10,080
32207 DVD	15,510	5,170	10,000	5,000	5,000
32301 Course Materials	3,500	1,900	3,000	2,000	2,000
35101 Exhibit Fees	0	13,500	15,000	12,500	12,500
Legislative Update Expense	104,359	96,209	113,536	95,226	112,390
61201 Equipment Rental	16,428	6,787	10,000	9,200	10,000
51101 Employee Travel	1,206	2,118	1,467	993	2,980
36998 Credit Card Fees	653	547	184	436	500
75102 1st Class & Misc Mai	42	45	300	11	300
75401 Express Mail	1,444	1,950	1,500	369	1,500
81411 Promotional Printing	650	0	1,000	1,000	1,000
81412 Promotional Mailing	3,233	0	3,500	620	1,000
84001 Postage	203	386	1,500	50	500
84002 Printing	1,600	300	700	0	700
84012 Registration Support	0	2,899	3,000	5,079	5,500
84061 Reception	1,603	1,262	2,500	494	2,000
84062 Luncheons	30,027	29,936	30,000	23,333	30,000
84254 Speaker Gifts	1,443	1,837	2,000	1,591	2,000
84258 Web Services	0	3,538	6,000	5,025	6,000
88233 Speakers Hotel	3,272	3,722	3,700	4,062	5,500
88239 Speakers Other Exp	0	0	0	24	250
88241 Outline Prt-Inhouse	2,815	1,413	3,000	0	1,000
88242 Outline Prt-Contract	9,991	9,936	13,000	12,000	13,000
88252 Certification Fee	150	150	0	150	150
88265 Refreshment Breaks	4,697	9,334	5,500	4,309	5,500
88269 Breakfast	10,905	9,457	10,000	7,328	10,000
88281 AV Ctr Dup/Prod	1,916	49	1,600	1,600	1,600
86432 Time Taping Editing	4,356	4,328	4,500	4,500	4,500
86532 Advertising News	753	2,397	800	2,515	2,641
86543 Graphics & Art	1,756	1,619	1,285	1,693	1,769
86623 Registrars	3,201	99	2,500	2,500	2,500

(2)

	08-09 Actual	09-10 Actual	10-11 Budget	10-11 Projected Actual	11-12 Proposed Budget
84999 Miscellaneous	35	90	500	500	500
85064 Service Recognition	165	6,757	5,000	6,800	6,800
86431 Meetings Administrat	6,330	6,840	4,500	6,783	6,986
86543 Graphics & Art	10,146	6,692	9,400	9,038	9,444

3

	08-09 Actual	09-10 Actual	10-11 Budget	10-11 Projected Actual	11-12 Proposed Budget
RPPTL Convention Revenue	63,787	42,170	88,000	93,000	87,000
32001 Registrations	0	38,655	50,000	35,000	35,000
35101 Exhibit Fees	4,500	0	13,000	13,000	13,000
35201 Sponsorships	25,250	3,450	25,000	45,000	39,000
RPPTL Convention Expense	112,847	99,211	116,770	117,335	118,042
61201 Equipment Rental	0	6,004	0	6,000	6,000
51101 Employee Travel	2,555	2,044	1,352	1,352	2,034
36998 Credit Card Fees	617	725	1,020	1,020	1,020
84001 Postage	2	83	1,000	100	100
84002 Printing	93	131	250	250	250
84110 Exhibitor Fees	0	1,059	250	1,060	1,060
84115 Entertainment	18,813	4,990	20,000	5,000	5,000
84201 Board Or Council Mee	0	10	0	15,000	15,000
84253 Sleeping Rooms	1,506	0	2,500	2,500	2,500
84999 Miscellaneous	0	0	0	500	500
88262 Meeting Meals	82,700	84,701	84,000	84,000	84,000
86543 Graphics & Art	438	353	898	553	578

(F)

	08-09 Actual	09-10 Actual	10-11 Budget	10-11 Projected Actual	11-12 Proposed Budget
Trust Officer Liaison Conf Revenue	185,192	12,517	183,100	202,405	202,405
32001 Registrations	106,025	11,475	107,250	124,425	124,425
32301 Course Materials	820	360	500	480	480
35003 Ticket Events	3,597	682	0	6,000	6,000
35101 Exhibit Fees	9,000	0	9,600	16,500	16,500
35201 Sponsorships	65,750	0	65,750	55,000	55,000
Trust Officer Liaison Conf Expense	197,655	4,119	175,041	202,885	202,885
61201 Equipment Rental	10,606	0	10,000	9,000	9,000
51101 Employee Travel	669	708	2,698	2,335	2,335
36998 Credit Card Fees	1,687	5	1,020	3,000	3,000
81411 Promotional Printing	4,426	0	500	500	500
81412 Promotional Mailing	3,143	0	5,500	2,500	2,500
84001 Postage	581	6	200	500	500
84002 Printing	722	0	1,500	500	500
84009 Supplies	1,909	0	200	500	500
84061 Reception	83,701	0	65,000	101,000	101,000
84062 Luncheons	32,731	0	30,000	25,000	25,000
84064 Golf Tourn Expenses	13,750	0	11,000	9,000	9,000
84999 Miscellaneous	0	0	0	100	100
88211 Steering Committee	0	0	1,500	1,500	1,500
88230 Speakers Expense	1,017	0	3,000	4,000	4,000
88241 Outline Prt-Inhouse	7,081	0	4,000	4,000	4,000
88252 Certification Fee	250	0	150	350	350
88260 Meeting Parking	0	0	0	3,500	3,500
88265 Refreshment Breaks	9,134	0	7,500	5,500	5,500
88269 Breakfast	20,506	0	28,000	26,000	26,000
86532 Advertising News	0	799	2,158	2,000	2,000
86543 Graphics & Art	584	110	1,115	2,100	2,100

(J)

RPPTL 2010 - 2011
Executive Council Meeting Schedule
BRIAN FELCOSKI'S YEAR

Date	Location
August 5 – August 8, 2010	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 www.thebreakers.com Room Rate: \$185.00 Cut-off Date: July 4, 2010
September 23 – September 26, 2010	Executive Council Meeting Ritz-Carlton Orlando, Grand Lakes Orlando, Florida Reservation Phone # 1-800-576-5760 http://www.grandelakes.com Room Rate: \$219.00 Cut-off Date: August 25, 2010
November 4 – November 7, 2010	Executive Council Meeting Sandpearl Resort Clearwater, Florida Reservation Phone #1-877-726-3111 http://www.sandpearl.com Room Rate: \$199.00 Cut-off Date: October 1, 2010
February 24 – February 27, 2011	Executive Council Meeting / Out-of-State Meeting Four Season Resort Santa Barbara, CA Reservation Phone #805-565-8299 www.fourseasons.com/santabarbara Room Rate: \$350.00 Cut-off Date: January 25, 2011
May 26 – May 29, 2011	Executive Council Meeting / RPPTL Convention Eden Roc Hotel Miami Beach, Florida Reservation Phone # 1-800-319-5354 http://boldnewedenroc.com/ Room Rate \$199.00 Cut-off Date: May 3, 2011

RPPTL 2011 - 2012
Executive Council Meeting Schedule
George Meyer's YEAR

Date	Location
August 4 – August 7, 2011	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Reservation Phone # 561-655-6611 www.thebreakers.com Room Rate: \$190.00 Cut-off Date: July 3, 2011
September 21 – September 25, 2011	Executive Council Meeting / Out-of-State Meeting Four Seasons – Prague Prague, Czech Republic Reservation Phone # 420-221-427-000 http://www.fourseasons.com/prague/ Room Rate: \$362.00 Cut-off Date: August 31, 2011
December 1 – December 4, 2011	Executive Council Meeting Marco Island Marriott Marco Island, Florida Reservation Phone #1-800-438-4373 http://www.marcoislandmarriott.com/ Room Rate: \$189.00 Cut-off Date: November 9, 2011
March 1 – March 4, 2011	Executive Council Meeting Sawgrass Marriott Ponte Vedra Ponte Vedra, Florida Reservation Phone #1-800-457-4653 http://www.sawgrassmarriott.com/ Room Rate: \$149.00 Cut-off Date: February 8, 2012
May 31 – June 3, 2012	Executive Council Meeting / RPPTL Convention Don CeSar Beach Resort St. Petersburg, Florida Reservation Phone # 1-800-282-1116 http://www.loewshotels.com/en/Hotels/St-Pete-Beach-Resort/Overview.aspx Room Rate \$160.00 Cut-off Date: May 9, 2012

BOARD OF GOVERNORS REPORT

Dan DeCubellis, Board Liaison

At its December 10 meeting at Amelia Island, The Florida Bar Board of Governors:

RPPTL SECTION ITEMS:

1. LEGISLATIVE POSITIONS

The board approved the following new requested legislative positions of the Section:

- (a) Distressed Condominium Act—Bulk Buyers
- (b) Homeowners Association Act—Communications & Internet
- (c) Notices of Judicial Sales—Expanded Publication by Internet
- (d) Uniform Power of Attorney Act with Florida Modifications
- (e) Intestate Estates—Surviving Spouse Share
- (f) Trust Proceedings—Attorneys Fees and Costs
- (g) Construction Liens on Leased Premises
- (h) Inherited IRA Accounts—Exemption
- (i) Wills—Modification and Reformation
- (j) Wills & Trusts--Revocation

The board referred decision to the Executive Committee on requested legislative positions from the Real Property, Probate and Trust Law Section and the Business Law Section on potential legislation addressing the Florida Supreme Court's recent Olmstead decision affecting limited liability companies. Decision will be made by the Executive Committee after January 18, 2011 to allow the Trial Lawyers Section, the Family Law Section, and possible other groups to review and comment on the issue.

2. CONFIDENTIAL INFORMATION OF DECEASED CLIENT

Proposed Advisory Opinion 10-3 addresses disclosing confidential information of a decedent at the request of a personal representative, beneficiaries, heirs of the decedent's estate, or their counsel. Comments were received on this opinion, so it will go back to the professional ethics committee at its next meeting.

3. FLORIDA REALTOR -- ATTORNEY JOINT COMMITTEE

The following attorneys were elected to two year terms on the committee:

Brenda Ezell

Kristopher Fernandez

Thomas Wright

Gary Nagle

Arlene Udick

OTHER ITEMS:

PROBATE RULES COMMITTEE

The board approved the filing of 2010 out of cycle rule amendments as requested by the Florida Probate Rules Committee resulting from the 2010 legislative session. The rule amendments relate to rules 5.201; 5.260; 5.360 and the creation of rules 5.3425 and 5.4055.

FRAUD IN FORECLOSURE CASES

President Mayanne Downs reported about the activities of the Florida Bar to combat fraud in foreclosure cases. Among other things, President Mayanne Downs has written to the chief judge of each of Florida's judicial circuits asking that all judges copy The Florida Bar with any Order that finds members have conducted themselves contrary to bar rules.

APPROVAL OF LEGISLATIVE POSITIONS

Approved on the recommendation of the Legislation Committee, a reauthorization of 13 legislative positions from the 2008-10 biennium for the 2010-12 biennium.

NEW COMMITTEE TO STUDY LAWYER REFERRAL SERVICES

At the suggestion of President Mayanne Downs and the Program Evaluation Committee, the board approved the creation of a new special committee to study the regulation of lawyer referral services.

FORMS AND SOFTWARE TO MEET BAR TRUST ACCOUNTING RULES

Heard from Clients' Security Fund Procedure Committee Chair Greg Coleman that the committee is working with the Disciplinary Procedure Committee on developing forms and software to help attorneys meet Bar trust account regulations. Disciplinary Procedure Committee Chair Andy Sasso said the forms and software could reduce costs of the Bar's grievance operations by reducing the number of cases prosecuted because of inadvertent errors on handing trust accounts. The Disciplinary Procedure Committee is also looking at requiring lawyers to fill out the trust account compliance statement on annual fee statements, with those who fail being considered delinquent members.

ADVISORY OPINION ON CONTACT WITH GOVERNMENT EMPLOYEES

Approved, on the recommendation of the Board Review Committee on Professional Ethics, a modified Proposed Advisory Opinion 09-1 on contacting government employees when they are represented by counsel. The Bar's website contains the proposed advisory opinions and the adopted opinions in the Professional Practice section and Ethics Opinions subsection.

CONFIDENTIAL INFORMATION ON COMPUTERS AND PRINTERS

Proposed Advisory Opinion 10-2 regarding confidential information stored on hard drives of scanners, printers and other computer-related equipment advises that lawyers must take reasonable steps to preserve confidential client information that may be captured and stored on hard drives of scanners, printers, and other computer-related equipment when that equipment is sold or disposed. The board received no comments and this opinion is final.

STRATEGIC PLAN

Heard a report on the Bar's updated strategic plan from President-elect Scott Hawkins. Bar goals remain protecting the judicial branch and its funding, building public confidence in the profession and the legal system, ensuring access to the courts and legal services, and enhancing the value of a Bar membership for lawyers.

DIVERSITY GRANT PROGRAM

Approved a \$50,000 budget amendment for the Bar's diversity grant program. Dori Foster-Morales and Arnell Bryant-Willis, co-chairs of the Special Committee on Diversity, asked board members to help get the word out to local bars that the money is available to support initiatives and programs which encourage diversity, diversity training and dialogue among lawyers in Florida through financial support of conferences, seminars, summits and symposia planned and hosted by local and specialty bar associations. The first deadline for grant applications is January 18.

PROGRAM REVIEWS

Heard a report from Program Evaluation Committee Chair Greg Coleman that the committee is continuing with its review of the Bar's professionalism and registered paralegal programs.

LEGISLATIVE SESSION AND ANTI-JUDGE POLITICAL CAMPAIGNS

Heard Steve Metz, the Bar's chief legislative counsel, discuss the upcoming session. Metz warned there are many uncertainties, including a larger than expected budget deficit, a new governor, and criticisms by some legislative leaders of recent Supreme Court rulings. He also warned of a trend by business and other outside interests mounting expensive and last minute campaigns against appellate judges up for merit retention and said that could happen in Florida in 2012.

2009-10 AUDIT

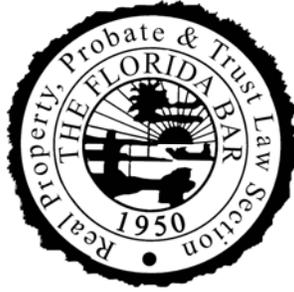
Audit Committee Chair Eric Meeks presented the audit for the 2009-10 fiscal year performed by the certified public accounting firm of Carr, Riggs & Ingram, LLC, and he reported that the Bar had a clean audit.

INVESTMENTS

Heard Investment Committee Chair Ian Comisky report that Bar investments are at an all-time high and have completely recovered from the 2008 market decline. He said the investment committee is slightly adjusting its short-term fund investments to up the percentage in the bond market to get higher returns in the current low-interest market. The Bar's long-term fund earned 8.85 percent since the third quarter of 2010, and the new investments in managed futures and hedge funds have performed well and as expected. The board approved the committee's recommendation to replace Henderson International Growth with Harding Loevner as manager for part of the Bar's international fund investments.

LAWYER REGULATION

Heard from former Bar Director of Lawyer Regulation Tony Boggs on the importance of maintaining high standards in the Bar's grievance and admissions processes, and the importance of having a balance in the discipline process that both protects the public and respects individual rights.



RPPTL FINANCIAL SUMMARY

2010 – 2011 [July 1, 2010 – December 31, 2010¹]

Revenue: *\$703,543

Expenses: \$510,944

Net:	\$192,599
------	-----------

*\$109,008 of this figure represents revenue from corporate sponsors and exhibitors

<p><u>Beginning Fund Balance (7-1-10)</u></p>

<p>\$ 1,024,000</p>

<p><u>YTD Fund Balance (12-31-10)</u></p>

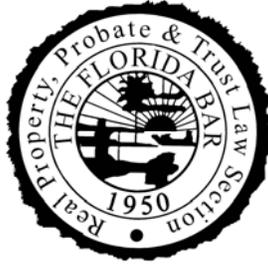
<p>\$1,216,599</p>

<p><u>RPPTL CLE</u></p>

<p>RPPTL YTD Actual CLE Revenue \$49,179</p>
--

<p>RPPTL Budgeted CLE Revenue \$198,100</p>

¹ This report is based on the tentative unaudited detail statement of operations dated 12/31/2010.



RPPTL Financial Summary from Separate Budgets
2010 – 2011 [July 1, 2010 – December 31, 2010¹]
YEAR TO DATE REPORT

General Budget

Revenue:	\$ 654,405
Expenses:	\$ 430,879
Net:	\$ 223,526

Legislative Update

Revenue:	\$ 44,492
Expenses:	\$ 82,164
Net:	(\$37,672)

Convention

Revenue:	\$ 93
Expenses:	(\$4,715) <i>credit</i>
Net:	\$4,808

Miscellaneous Section Service Courses

Revenue:	\$ 703,543
Expenses:	\$ 510,944
Net:	\$ 192,599

Roll-up Summary (Total)

Revenue:	\$ 703,543
Expenses:	\$ 510,944
Net Operations:	\$ 192,599

Reserve (Fund Balance):	\$ 1,024,000
GRAND TOTAL	\$ 1,216,599

¹ This report is based on the tentative unaudited detail statement of operations dated 12/31/2010

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Total Real Prop Probate & =====				
31431 Section Dues	350	457,100	465,000	98.30
31432 Affiliate Dues	0	1,750	1,750	100.00
31433 Admin Fee to TFB	-18	-159,804	-163,450	97.77

Total Dues Income-Net	332	299,046	303,300	98.60

32001 Registrations	0	3,888	157,250	2.47
32006 Live Web Cast	0	11,500	8,750	131.43
32010 Legal Span On-line	0	1,190	750	158.67
32191 CLE Courses	-17,198	49,179	198,100	24.83
32205 Compact Disc	1,505	12,790	28,800	44.41
32207 DVD	470	5,170	10,000	51.70
32293 Section Differential	863	8,589	35,000	24.54
32301 Course Materials	100	2,100	3,500	60.00
34704 Actionline Advertise	0	7,275	15,000	48.50
35003 Ticket Events	0	72,921	0	*
35101 Exhibit Fees	0	12,500	37,600	33.24
35201 Sponsorships	2,500	96,508	277,750	34.75
35603 Bd/Council Mtg Regis	-150	22,607	120,000	18.84
38499 Investment Allocatio	30,271	98,280	44,785	219.45

Other Income	18,361	404,497	937,285	43.16

Total Revenues	18,693	703,543	1,240,585	56.71

36998 Credit Card Fees	506	3,630	5,924	61.28
51101 Employee Travel	0	3,179	10,241	31.04
61201 Equipment Rental	0	9,325	20,000	46.63
71001 Telephone/Direct	100	400	1,200	33.33
71005 Internet Charges	0	276	1,100	25.09
75102 1st Class & Misc Mai	7	26	300	8.67
75401 Express Mail	23	696	1,500	46.40
81411 Promotional Printing	0	0	2,000	0.00
81412 Promotional Mailing	0	620	14,000	4.43
84001 Postage	35	1,867	5,700	32.75
84002 Printing	0	377	3,950	9.54
84006 Newsletter	0	10,154	40,000	25.39
84009 Supplies	0	54	500	10.80
84010 Photocopying	0	167	500	33.40
84012 Registration Support	0	5,079	3,000	169.30
84015 Officers Conference	0	460	1,200	38.33
84016 Scrivener	0	0	5,000	0.00
84051 Officers Travel Expe	1,323	1,323	3,000	44.10
84054 CLE Speaker Expense	180	210	4,500	4.67
84061 Reception	0	494	67,500	0.73
84062 Luncheons	0	23,333	60,000	38.89
84064 Golf Tourn Expenses	0	0	11,000	0.00
84101 Committee Expenses	19,839	46,997	65,000	72.30

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Total Real Prop Probate & =====				
84106 Realtor Relations	0	3,000	5,000	60.00
84107 Diversity Initiative	1,259	1,734	15,000	11.56
84110 Exhibitor Fees	0	0	250	0.00
84115 Entertainment	0	0	20,000	0.00
84201 Board Or Council Mee	106,199	265,635	400,000	66.41
84216 Strategic Planning M	0	0	10,000	0.00
84238 Council Mtg Recreati	1,510	9,264	35,000	26.47
84239 Hospitality Suite	5,141	6,717	15,000	44.78
84253 Sleeping Rooms	0	0	2,500	0.00
84254 Speaker Gifts	0	1,591	2,000	79.55
84258 Web Services	0	5,025	6,000	83.75
84279 Council Members Hand	0	2,055	3,500	58.71
84310 Law School Liaison	0	0	7,500	0.00
84322 Fellowships-Exc Cou	786	6,362	10,000	63.62
84422 Website	250	27,785	75,000	37.05
84501 Legislative Consulta	0	25,000	100,000	25.00
84503 Legislative Travel	1,000	7,024	20,000	35.12
84524 Memorial Tributes	0	0	500	0.00
84701 Council Of Sections	0	0	300	0.00
84998 Operating Reserve	0	0	85,092	0.00
84999 Miscellaneous	0	0	500	0.00
85064 Service Recognition	0	1,299	5,000	25.98
86432 Time Taping Editing	0	5,995	4,500	133.22
88211 Steering Committee	0	0	1,500	0.00
88230 Speakers Expense	0	1,319	7,000	18.84
88233 Speakers Hotel	0	4,062	3,700	109.78
88239 Speakers Other Exp	0	24	0	*
88241 Outline Prt-Inhouse	92	92	7,000	1.31
88242 Outline Prt-Contract	0	11,403	13,000	87.72
88252 Course Credit Fee	0	0	150	0.00
88260 Meeting Parking	0	716	0	*
88262 Meeting Meals	0	-5,308	84,000	-6.32
88265 Refreshment Breaks	0	4,309	13,000	33.15
88269 Breakfast	0	7,328	38,000	19.28
88281 A/V Ctr Dup/Prod	0	0	1,600	0.00

Total Operating Expenses	138,250	501,098	1,318,707	38.00

86431 Meetings Administrat	1,220	2,600	4,500	57.78
86532 Advertising News	0	1,614	2,958	54.56
86543 Graphics & Art	487	5,621	12,698	44.27
86623 Registrars	0	11	2,500	0.44

Total TFB Support Services	1,707	9,846	22,656	43.46

Total Expenses	139,957	510,944	1,341,363	38.09

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Total Real Prop Probate & =====	-----	-----	-----	-----
Net Operations	-121,264	192,599	-100,778	-191.11
21001 Fund Balance	0	1,024,000	895,690	114.33
Total Current Fund Balance	-121,264	1,216,599	794,912	153.05
	-----	-----	-----	-----

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
<u>Real Prop Probate & Trust</u>				
31431 Section Dues	350	457,100	465,000	98.30
31432 Affiliate Dues	0	1,750	1,750	100.00
31433 Admin Fee to TFB	-18	-159,804	-163,450	97.77

Total Dues Income-Net	332	299,046	303,300	98.60

32191 CLE Courses	-17,198	49,179	198,100	24.83
32293 Section Differential	863	8,589	35,000	24.54
34704 Actionline Advertise	0	7,275	15,000	48.50
35003 Ticket Events	0	72,921	0	*
35201 Sponsorships	2,500	96,508	187,000	51.61
35603 Bd/Council Mtg Regis	-150	22,607	120,000	18.84
38499 Investment Allocatio	30,271	98,280	44,785	219.45

Other Income	16,286	355,359	599,885	59.24

Total Revenues	16,618	654,405	903,185	72.46

36998 Credit Card Fees	473	3,072	3,700	83.03
51101 Employee Travel	0	1,718	4,724	36.37
71001 Telephone/Direct	100	400	1,200	33.33
71005 Internet Charges	0	276	1,100	25.09
84001 Postage	35	1,818	3,000	60.60
84002 Printing	0	377	1,500	25.13
84006 Newsletter	0	10,154	40,000	25.39
84009 Supplies	0	54	300	18.00
84010 Photocopying	0	167	500	33.40
84015 Officers Conference	0	460	1,200	38.33
84016 Scrivener	0	0	5,000	0.00
84051 Officers Travel Expe	1,323	1,323	3,000	44.10
84054 CLE Speaker Expense	180	210	4,500	4.67
84101 Committee Expenses	19,839	46,997	65,000	72.30
84106 Realtor Relations	0	3,000	5,000	60.00
84107 Diversity Initiative	1,259	1,734	15,000	11.56
84201 Board Or Council Mee	106,199	265,635	400,000	66.41
84216 Strategic Planning M	0	0	10,000	0.00
84238 Council Mtg Recreati	1,510	9,264	35,000	26.47
84239 Hospitality Suite	5,141	6,717	15,000	44.78
84279 Council Members Hand	0	2,055	3,500	58.71
84310 Law School Liaison	0	0	7,500	0.00
84322 Fellowships-Exc Cou	786	6,362	10,000	63.62
84422 Website	250	27,785	75,000	37.05
84501 Legislative Consulta	0	25,000	100,000	25.00
84503 Legislative Travel	1,000	7,024	20,000	35.12
84524 Memorial Tributes	0	0	500	0.00
84701 Council Of Sections	0	0	300	0.00
84998 Operating Reserve	0	0	85,092	0.00
84999 Miscellaneous	0	0	500	0.00

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Real Prop Probate & Trust ~~~~~				
85064 Service Recognition	0	1,299	5,000	25.98
Total Operating Expenses	138,095	422,901	922,116	45.86
86431 Meetings Administrat	1,220	2,600	4,500	57.78
86543 Graphics & Art	487	5,378	9,400	57.21
Total TFB Support Services	1,707	7,978	13,900	57.40
Total Expenses	139,802	430,879	936,016	46.03
Net Operations	-123,184	223,526	-32,831	-680.84
21001 Fund Balance	0	1,024,000	895,690	114.33
Total Current Fund Balance	-123,184	1,247,526	862,859	144.58

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Total RP Miscellaneous Cou =====				
Total Dues Income-Net	0	0	0	*
32001 Registrations	0	3,795	0	*
32010 Legal Span On-line	0	188	0	*
32205 Compact Disc	95	570	0	*
Other Income	95	4,553	0	*
Total Revenues	95	4,553	0	*
36998 Credit Card Fees	3	5	0	*
75401 Express Mail	0	34	0	*
86432 Time Taping Editing	0	1,765	0	*
Total Operating Expenses	3	1,804	0	*
86543 Graphics & Art	0	85	0	*
86623 Registrars	0	11	0	*
Total TFB Support Services	0	96	0	*
Total Expenses	3	1,900	0	*
Net Operations	92	2,653	0	*
Total Current Fund Balance	92	2,653	0	*

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
C1226 Fire on the Coast ~~~~~				
Total Dues Income-Net	0	0	0	*
32001 Registrations	0	3,795	0	*
32010 Legal Span On-line	0	53	0	*
32205 Compact Disc	95	570	0	*
Other Income	95	4,418	0	*
Total Revenues	95	4,418	0	*
36998 Credit Card Fees	3	5	0	*
75401 Express Mail	0	26	0	*
86432 Time Taping Editing	0	175	0	*
Total Operating Expenses	3	206	0	*
86623 Registrars	0	11	0	*
Total TFB Support Services	0	11	0	*
Total Expenses	3	217	0	*
Net Operations	92	4,201	0	*
Total Current Fund Balance	92	4,201	0	*

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
C1240 Time Out/Tampa A/V ~~~~~				
Total Dues Income-Net	0	0	0	*
32010 Legal Span On-line	0	135	0	*
Other Income	0	135	0	*
Total Revenues	0	135	0	*
75401 Express Mail	0	8	0	*
86432 Time Taping Editing	0	1,590	0	*
Total Operating Expenses	0	1,598	0	*
86543 Graphics & Art	0	85	0	*
Total TFB Support Services	0	85	0	*
Total Expenses	0	1,683	0	*
Net Operations	0	-1,548	0	*
Total Current Fund Balance	0	-1,548	0	*

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Total Trust Officer Liaiso =====				
Total Dues Income-Net	0	0	0	*
32001 Registrations	0	0	107,250	0.00
32301 Course Materials	0	0	500	0.00
35101 Exhibit Fees	0	0	9,600	0.00
35201 Sponsorships	0	0	65,750	0.00
Other Income	0	0	183,100	0.00
Total Revenues	0	0	183,100	0.00
36998 Credit Card Fees	0	0	1,020	0.00
51101 Employee Travel	0	0	2,698	0.00
61201 Equipment Rental	0	0	10,000	0.00
81411 Promotional Printing	0	0	500	0.00
81412 Promotional Mailing	0	0	5,500	0.00
84001 Postage	0	0	200	0.00
84002 Printing	0	0	1,500	0.00
84009 Supplies	0	0	200	0.00
84061 Reception	0	0	65,000	0.00
84062 Luncheons	0	0	30,000	0.00
84064 Golf Tourn Expenses	0	0	11,000	0.00
88211 Steering Committee	0	0	1,500	0.00
88230 Speakers Expense	0	0	3,000	0.00
88241 Outline Prt-Inhouse	0	0	4,000	0.00
88252 Course Credit Fee	0	0	150	0.00
88260 Meeting Parking	0	716	0	*
88265 Refreshment Breaks	0	0	7,500	0.00
88269 Breakfast	0	0	28,000	0.00
Total Operating Expenses	0	716	171,768	0.42
86532 Advertising News	0	0	2,158	0.00
86543 Graphics & Art	0	0	1,115	0.00
Total TFB Support Services	0	0	3,273	0.00
Total Expenses	0	716	175,041	0.41
Net Operations	0	-716	8,059	-8.88
Total Current Fund Balance	0	-716	8,059	-8.88

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
C1210 2011 RPTOLC ~~~~~				
Total Dues Income-Net	0	0	0	*
Other Income	0	0	0	*
Total Revenues	0	0	0	*
88260 Meeting Parking	0	716	0	*
Total Operating Expenses	0	716	0	*
Total TFB Support Services	0	0	0	*
Total Expenses	0	716	0	*
Net Operations	0	-716	0	*
Total Current Fund Balance	0	-716	0	*

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Total Legislative Update =====				
Total Dues Income-Net	0	0	0	*
32006 Live Web Cast	0	11,500	8,750	131.43
32010 Legal Span On-line	0	1,002	750	133.60
32205 Compact Disc	1,410	12,220	28,800	42.43
32207 DVD	470	5,170	10,000	51.70
32301 Course Materials	100	2,100	3,000	70.00
35101 Exhibit Fees	0	12,500	15,000	83.33
Other Income	1,980	44,492	66,300	67.11
Total Revenues	1,980	44,492	66,300	67.11
36998 Credit Card Fees	30	553	184	300.54
51101 Employee Travel	0	993	1,467	67.69
61201 Equipment Rental	0	9,200	10,000	92.00
75102 1st Class & Misc Mai	7	26	300	8.67
75401 Express Mail	23	662	1,500	44.13
81411 Promotional Printing	0	0	1,000	0.00
81412 Promotional Mailing	0	620	3,500	17.71
84001 Postage	0	49	1,500	3.27
84002 Printing	0	0	700	0.00
84012 Registration Support	0	5,079	3,000	169.30
84061 Reception	0	494	2,500	19.76
84062 Luncheons	0	23,333	30,000	77.78
84254 Speaker Gifts	0	1,591	2,000	79.55
84258 Web Services	0	5,025	6,000	83.75
86432 Time Taping Editing	0	4,230	4,500	94.00
88230 Speakers Expense	0	1,319	4,000	32.98
88233 Speakers Hotel	0	4,062	3,700	109.78
88239 Speakers Other Exp	0	24	0	*
88241 Outline Prt-Inhouse	92	92	3,000	3.07
88242 Outline Prt-Contract	0	11,403	13,000	87.72
88265 Refreshment Breaks	0	4,309	5,500	78.35
88269 Breakfast	0	7,328	10,000	73.28
88281 A/V Ctr Dup/Prod	0	0	1,600	0.00
Total Operating Expenses	152	80,392	108,951	73.79
86532 Advertising News	0	1,614	800	201.75
86543 Graphics & Art	0	158	1,285	12.30
86623 Registrars	0	0	2,500	0.00
Total TFB Support Services	0	1,772	4,585	38.65

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Total Legislative Update =====				
Total Expenses	152	82,164	113,536	72.37
Net Operations	1,828	-37,672	-47,236	79.75
Total Current Fund Balance	1,828	-37,672	-47,236	79.75

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
<u>Legislative Update</u>				
Total Dues Income-Net	0	0	0	*
32006 Live Web Cast	0	0	8,750	0.00
32010 Legal Span On-line	0	0	750	0.00
32205 Compact Disc	0	0	28,800	0.00
32207 DVD	0	0	10,000	0.00
32301 Course Materials	0	0	3,000	0.00
35101 Exhibit Fees	0	12,500	15,000	83.33
Other Income	0	12,500	66,300	18.85
Total Revenues	0	12,500	66,300	18.85
36998 Credit Card Fees	1	136	184	73.91
51101 Employee Travel	0	255	1,467	17.38
61201 Equipment Rental	0	9,200	10,000	92.00
75102 1st Class & Misc Mai	0	0	300	0.00
75401 Express Mail	0	0	1,500	0.00
81411 Promotional Printing	0	0	1,000	0.00
81412 Promotional Mailing	0	620	3,500	17.71
84001 Postage	0	49	1,500	3.27
84002 Printing	0	0	700	0.00
84012 Registration Support	0	5,079	3,000	169.30
84061 Reception	0	494	2,500	19.76
84062 Luncheons	0	23,333	30,000	77.78
84254 Speaker Gifts	0	1,591	2,000	79.55
84258 Web Services	0	0	6,000	0.00
86432 Time Taping Editing	0	0	4,500	0.00
88230 Speakers Expense	0	326	4,000	8.15
88233 Speakers Hotel	0	0	3,700	0.00
88241 Outline Prt-Inhouse	0	0	3,000	0.00
88242 Outline Prt-Contract	0	11,403	13,000	87.72
88265 Refreshment Breaks	0	4,309	5,500	78.35
88269 Breakfast	0	7,328	10,000	73.28
88281 A/V Ctr Dup/Prod	0	0	1,600	0.00
Total Operating Expenses	1	64,123	108,951	58.85
86532 Advertising News	0	0	800	0.00
86543 Graphics & Art	0	61	1,285	4.75
86623 Registrars	0	0	2,500	0.00
Total TFB Support Services	0	61	4,585	1.33
Total Expenses	1	64,184	113,536	56.53

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
Legislative Update ~~~~~				
Net Operations	-1	-51,684	-47,236	109.42
Total Current Fund Balance	-1	-51,684	-47,236	109.42

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
C1037 2009 Legislative Upd ~~~~~				
Total Dues Income-Net	0	0	0	*
32010 Legal Span On-line	0	1,002	0	*
32205 Compact Disc	235	2,115	0	*
32207 DVD	0	705	0	*
Other Income	235	3,822	0	*
Total Revenues	235	3,822	0	*
36998 Credit Card Fees	7	44	0	*
75102 1st Class & Misc Mai	0	5	0	*
75401 Express Mail	10	40	0	*
Total Operating Expenses	17	89	0	*
Total TFB Support Services	0	0	0	*
Total Expenses	17	89	0	*
Net Operations	218	3,733	0	*
Total Current Fund Balance	218	3,733	0	*

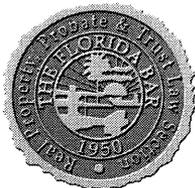
	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
C1216 2010 Legislative Upd				
Total Dues Income-Net	0	0	0	*
32006 Live Web Cast	0	11,500	0	*
32205 Compact Disc	1,175	10,105	0	*
32207 DVD	470	4,465	0	*
32301 Course Materials	100	2,100	0	*
Other Income	1,745	28,170	0	*
Total Revenues	1,745	28,170	0	*
36998 Credit Card Fees	22	373	0	*
51101 Employee Travel	0	738	0	*
75102 1st Class & Misc Mai	7	21	0	*
75401 Express Mail	13	622	0	*
84258 Web Services	0	5,025	0	*
86432 Time Taping Editing	0	4,230	0	*
88230 Speakers Expense	0	993	0	*
88233 Speakers Hotel	0	4,062	0	*
88239 Speakers Other Exp	0	24	0	*
88241 Outline Prt-Inhouse	92	92	0	*
Total Operating Expenses	134	16,180	0	*
86532 Advertising News	0	1,614	0	*
86543 Graphics & Art	0	97	0	*
Total TFB Support Services	0	1,711	0	*
Total Expenses	134	17,891	0	*
Net Operations	1,611	10,279	0	*
Total Current Fund Balance	1,611	10,279	0	*

	December 2010 Actuals	YTD 10-11 Actuals	Budget	Percent Budget
RPPTL Convention ~~~~~				
Total Dues Income-Net	0	0	0	*
32001 Registrations	0	93	50,000	0.19
35101 Exhibit Fees	0	0	13,000	0.00
35201 Sponsorships	0	0	25,000	0.00
Other Income	0	93	88,000	0.11
Total Revenues	0	93	88,000	0.11
36998 Credit Card Fees	0	0	1,020	0.00
51101 Employee Travel	0	468	1,352	34.62
61201 Equipment Rental	0	125	0	*
81411 Promotional Printing	0	0	500	0.00
81412 Promotional Mailing	0	0	5,000	0.00
84001 Postage	0	0	1,000	0.00
84002 Printing	0	0	250	0.00
84110 Exhibitor Fees	0	0	250	0.00
84115 Entertainment	0	0	20,000	0.00
84253 Sleeping Rooms	0	0	2,500	0.00
88262 Meeting Meals	0	-5,308	84,000	-6.32
Total Operating Expenses	0	-4,715	115,872	-4.07
86543 Graphics & Art	0	0	898	0.00
Total TFB Support Services	0	0	898	0.00
Total Expenses	0	-4,715	116,770	-4.04
Net Operations	0	4,808	-28,770	-16.71
Total Current Fund Balance	0	4,808	-28,770	-16.71

CHAIR

Brian J. Felcoski
Goldman, Felcoski & Stone, P.A.
95 Merrick Way, Suite 440
Coral Gables, FL 33134-5310
(305) 446-2800
Fax: (305) 446-2819
bfelcoski@gfsestatelaw.com

**REAL PROPERTY,
PROBATE &
TRUST LAW
SECTION**



**THE
FLORIDA
BAR**

CHAIR ELECT

George J. Meyer
Carlton Fields, P.A.
P.O. Box 3239
Tampa, Florida 33601-3239
(813) 223-7000
Fax: (813) 229-4133
gmeyer@carltonfields.com

www.RPPTL.org

February 4, 2011

VIA EMAIL and US MAIL

**DIRECTOR, PROBATE AND
TRUST LAW DIVISION**

William F. Belcher
P.O. Drawer T
Saint Petersburg, FL 33731-2302
(727) 821-1249
Fax: (727) 823-8043
wfbelcher@aol.com

Jeffrey T. Picker, Esq.
Assistant UPL Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

**DIRECTOR, REAL PROPERTY
LAW DIVISION**

Margaret A. Rolando
Shutts & Bowen LLP
201 South Biscayne Blvd., Suite 1500
Miami, Florida 33131-4328
(305) 379-9144
Fax: (305) 347-7744
mrolando@shutts-law.com

RE: FAO #2011-1; Nonlawyer Assistance in Short Sale Transactions

SECRETARY

Debra L. Boje
Ruden McClosky Smith Schuster & Russell, P.A.
401 E. Jackson St., Ste. 2700
Tampa, FL 33602-5841
(813) 222-6614
Fax: (813) 314-6914
debraboje@ruden.com

Dear Mr. Picker:

In response to your request for comment presented in your December 14, 2010 correspondence to the undersigned, a subcommittee of the pertinent committees within the Real Property, Probate and Trust Law Section ("RPPTL") of the Florida Bar was created to study the issues raised and provide a practical and coherent approach to address the concerns. The subcommittee was comprised of members of the following RPPTL committees: Mortgages and Other Encumbrances Committee, Residential Real Estate & Industry Liaison Committee, Real Property Problems Study Committee and Professionalism and Ethics Committee.

TREASURER

Michael A. Dribin
Broad & Cassel
2 S. Biscayne Blvd., Ste. 2100
Miami, FL 33131-1811
(305) 373-9422
Fax: (305) 995-6390
mdribin@broadandcassel.com

The subcommittee members were real property attorneys from throughout Florida with both positive and negative experiences involving nonlawyers assisting property owners in short sale transactions. The subcommittee members included counsel who represent the nonlawyer categories under consideration by the UPL Committee, namely real estate agents and brokers and mortgage brokers, as well as counsel with years of experience representing property owners in short sale transactions.

LEGISLATION CHAIR

Michael J. Gelfand
Gelfand & Arpe
1555 Palm Beach Lake Blvd., Ste. 1220
West Palm Beach, FL 33401-2323
(561) 655-6224
Fax: (561) 655-1367
mjgelfand@gelfandarpe.com

The subcommittee members extensively discussed the benefits and detriments of having a nonlawyer participate in a short sale with the property owner's lender(s) and other creditors, with the concern being at what point the nonlawyer crossed the line into the unlicensed practice of law. Based upon the consensus of the subcommittee, the RPPTL Section offers the following guidelines for the UPL Committee's consideration regarding a nonlawyer assisting a property owner in a short sale transaction:

**DIRECTOR, CIRCUIT
REPRESENTATIVES**

Andrew M. O'Malley
Carey O'Malley Whitaker Et Al
712 S. Oregon Avenue
Tampa, FL 33606-2543
(813) 250-0577
Fax: (813) 250-9898
aomalley@cowmpa

IMMEDIATE PAST CHAIR

John B. Neukamm
Mechanik Nuccio
305 South Boulevard
Tampa, FL 33606-2150
(813) 276-1920
Fax: (813) 276-1560
jbn@floridalandlaw.com

SECTION ADMINISTRATOR

Liz C. Smith
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5619
Fax: (850) 561-5825
esmith@flabar.org

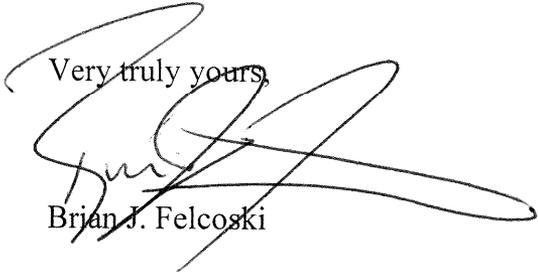
--- A non-lawyer who assists a property owner in performing the following in connection with a short sale transaction is not practicing law: fact finding, information and documentation gathering and transmittal of the information and documentation to the property owner's lender(s) to facilitate the approval of the short sale transaction.

--- A non-lawyer who assists a property owner in performing the following in connection with a short sale transaction is practicing law: evaluating and/or giving an opinion as to the legal significance of any document, including, without limitation, documents submitted by the property owner to the lender or documents from the lender relating to the terms of the short sale approval or deficiency; providing advice regarding the legal ramifications of a short sale (with or without deficiency waiver), foreclosure, bankruptcy or any other legal recourse.

--- A non-lawyer who assists a property owner in negotiating the terms of a short sale approval may or may not be practicing law depending on the particular facts. Generally, if the negotiating involves evaluating, advising or giving a legal opinion, then such negotiating is practicing law. Generally, if the negotiating is simply the transmittal of information from one party to the other without evaluating, advising or opining, then the negotiating is not the practice of law.

Because the unlicensed practice of law can inadvertently or deliberately occur when a nonlawyer assists a property owner in a short sale transaction, the UPL Committee may consider legislation requiring disclosure by any nonlawyer assisting a property owner in processing a short sale transaction. The RPPTL Section appreciates the opportunity to provide the above information to the UPL Committee and remains available to offer further assistance.

Very truly yours,


Brian J. Felcoski

cc: George J. Meyer, Esq.
Margaret A. Rolando, Esq.
Salome J. Zikakis, Esq.
Lee A. Weintraub, Esq.

**REAL PROPERTY,
PROBATE &
TRUST LAW
SECTION**



**THE
FLORIDA
BAR**

www.RPPTL.org

December 30, 2010

Stephen W. Tepler, Esq.
5715 Firestone Court
Sarasota, Florida 34238-5745

Re: Proposed Advisory Opinion 10-3

Dear Steve:

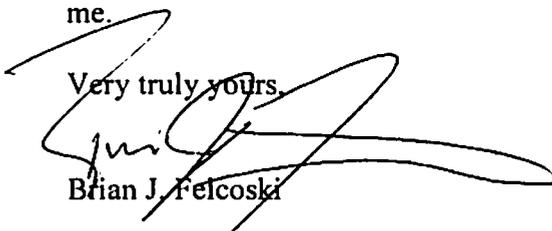
On behalf of the RPPTL Section, I want to thank you and the Professional Ethics Committee for your work on Proposed Advisory Opinion 10-3. As you know, our Section endorsed the proposed opinion in the form that has been published for comment, and we appreciated being included in the process.

However, on reflection some of our members who are most intimately familiar with the issue and its ramifications in their practices have suggested some clarifications to the proposed opinion. We asked Barry Spivey to take the lead and prepare a letter to you identifying the recommendations and a redline of the proposed opinion so that you and the committee could see the requested changes. I understand you have received the letter and redline. We want you to be aware that the suggestions have been considered carefully and come with the support of the Section. We hope you and the committee will consider adopting these recommendations. Obviously, our joint purpose is to give Florida lawyers the best guidance we can on this complicated subject.

Thanks again to the Professional Ethics Committee on their hard work in connection with proposed opinion.

Of course, if you have any questions, please do not hesitate to contact me.

Very truly yours,


Brian J. Felcoski

cc: Mayanne Downs, Esq.
Scott Hawkins, Esq.
Daniel L. DeCubellis, Esq.
Elizabeth Clark Tarbert, Esq.

CHAIR

Brian J. Felcoski
Goldman, Felcoski & Stone, P.A.
95 Merrick Way, Suite 440
Coral Gables, FL 33134-5310
(305) 446-2800
Fax: (305) 446-2819
bfelcoski@gfaestatelaw.com

CHAIR ELECT

George J. Meyer
Carlton Fields, P.A.
P.O. Box 3239
Tampa, Florida 33601-3239
(813) 223-7000
Fax: (813) 229-4133
gmeyer@carltonfields.com

**DIRECTOR, PROBATE AND
TRUST LAW DIVISION**

William F. Belcher
P.O. Drawer T
Saint Petersburg, FL 33731-2302
(727) 821-1249
Fax: (727) 823-8043
wfbelcher@aol.com

**DIRECTOR, REAL PROPERTY
LAW DIVISION**

Margaret A. Rolando
Shutts & Bowen LLP
201 South Biscayne Blvd., Suite 1500
Miami, Florida 33131-4328
(305) 379-9144
Fax: (305) 347-7744
mrolando@shutts-law.com

SECRETARY

Debra L. Boje
Ruden McClosky Smith Schuster & Russell, P.A.
401 E. Jackson St., Ste. 2700
Tampa, FL 33602-5841
(813) 222-6614
Fax: (813) 314-6914
debraboje@ruden.com

TREASURER

Michael A. Dribin
Broad & Cassel
2 S. Biscayne Blvd., Ste. 2100
Miami, FL 33131-1811
(305) 373-9422
Fax: (305) 995-6390
mdribin@broadandcassel.com

LEGISLATION CHAIR

Michael J. Gelfand
Gelfand & Arpe
1555 Palm Beach Lake Blvd., Ste. 1220
West Palm Beach, FL 33401-2323
(561) 655-6224
Fax: (561) 655-1367
mjgelfand@gelfandarpe.com

**DIRECTOR, CIRCUIT
REPRESENTATIVES**

Andrew M. O'Malley
Carey O'Malley Whitaker Et Al
712 S. Oregon Avenue
Tampa, FL 33606-2543
(813) 250-0577
Fax: (813) 250-9898
acmalley@cowmpa

IMMEDIATE PAST CHAIR

John B. Neukamm
Mechanik Nuccio
305 South Boulevard
Tampa, FL 33606-2150
(813) 276-1920
Fax: (813) 276-1560
jbn@floridalandlaw.com

SECTION ADMINISTRATOR

Liz C. Smith
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5619
Fax: (850) 561-5825
esmith@flabar.org

47 (2) to prevent a death or substantial bodily harm to another.
48

49 (c) **When Lawyer May Reveal Information.** A lawyer may reveal such
50 information to the extent the lawyer reasonably believes necessary:
51

52 (1) to serve the client's interest unless it is information the client specifically
53 requires not to be disclosed;
54

55 (2) to establish a claim or defense on behalf of the lawyer in a controversy
56 between the lawyer and client;
57

58 (3) to establish a defense to a criminal charge or civil claim against the
59 lawyer based upon conduct in which the client was involved;
60

61 (4) to respond to allegations in any proceeding concerning the lawyer's
62 representation of the client; or
63

64 (5) to comply with the Rules of Professional Conduct.
65

66 (d) **Exhaustion of Appellate Remedies.** When required by a tribunal to
67 reveal such information, a lawyer may first exhaust all appellate remedies.
68

69 (e) **Limitation on Amount of Disclosure.** When disclosure is mandated or
70 permitted, the lawyer shall disclose no more information than is required to meet
71 the requirements or accomplish the purposes of this rule.
72

73 The comment to the rule states that “[t]he duty of confidentiality continues after the
74 client-lawyer relationship has terminated.”

75 A request for information from a personal representative, beneficiaries or heirs-at-law of
76 a decedent’s estate, or their counsel will generally involve information “relating to the
77 representation of a client,” and a lawyer ordinarily should not voluntarily disclose such
78 information without the client’s informed consent. *See* Florida Ethics Opinion 92-5. There are
79 exceptions to the confidentiality rule that either require or permit a lawyer to disclose
80 confidential information. The Committee cannot envision every instance in which a personal
81 representative, beneficiaries or heirs-at-law of a decedent’s estate, or their counsel may request
82 information from a decedent’s lawyer, but will provide several examples in an effort to illustrate
83 the appropriate analysis.

84 The exception to the confidentiality rule that is most likely to apply in such requests is set
85 forth in subdivision (c)(1): “to serve the client's interest unless it is information the client
86 specifically requires not to be disclosed.” Thus, if a personal representative asks for confidential
87 information relating to a decedent’s estate plan and the decedent’s lawyer determines that
88 disclosure of the information would aid in the proper distribution of the decedent’s estate
89 according to the decedent’s wishes, the lawyer may properly disclose the information to the
90 personal representative, unless the decedent specifically required that the information be kept
91 confidential. For example, in Florida Ethics Opinion 72-40, a client instructed the inquiring
92 lawyer who was hired to assist the client with estate planning to “forget” that the client had a

93 “large amount of bearer bonds, registered jointly with his wife.” The opinion concludes that the
94 lawyer may not disclose the existence of these assets to the bank which was to be the sole
95 executor of the client’s estate unless the client gave consent to the disclosure or unless ordered to
96 do so by a court, whether the inquiry was made before or after the client’s death. The opinion
97 states that “the duty to preserve a client’s confidences survives his death. . . .” Thus, a lawyer
98 must undertake the appropriate analysis under the confidentiality rule, even if it is the personal
99 representative who requests information of the decedent from a lawyer who assisted in the
100 decedent’s estate planning and the information sought relates specifically to that estate plan.

101 Similarly, if a beneficiary or heir-at-law asks for specific information and the decedent’s
102 lawyer determines that voluntary disclosure of the information would serve the decedent’s
103 interests, the lawyer may disclose that specific information. For example, a lawyer might
104 provide a copy of the decedent’s will or disclose information relating to the execution of a will to
105 a beneficiary or heir-at-law if the lawyer reasonably believes that disclosure of the information
106 would forestall litigation by the beneficiary or heir-at-law, thereby conserving assets of the estate
107 in the exercise of the lawyer’s professional discretion. However, information that the decedent
108 specifically required the lawyer not to disclose to others will always remain confidential, will
109 always be subject to the lawyer-client evidentiary privilege, and may not be disclosed by the
110 lawyer to the beneficiary, or heir-at-law, or anyone else, regardless of whether ~~the information is~~
111 privileged the lawyer thinks disclosure would “serve the client’s interest”. For example, a
112 deceased client may have specifically instructed the lawyer not to disclose information to anyone
113 about an illegitimate child or an extra-marital relationship.

114 Under Florida Statutes §90.502(3)(c), the *personal representative* may claim the privilege
115 on behalf of the decedent. It would be difficult for the personal representative to claim or waive
116 privilege on behalf of the decedent without knowing the content of the information which is
117 subject to the privilege. Therefore, a lawyer who represented the decedent in estate planning
118 matters may disclose information from the file to the personal representative, unless the decedent
119 specifically required that the information not be disclosed. Disclosure of such information is
120 impliedly authorized, to the extent the decedent did not specifically require that its
121 confidentiality be maintained, to carry out the decedent’s wishes involving the estate.

122 On the other hand, a lawyer who represented the decedent on matters other than estate
123 planning would have no such implied authorization to disclose information to the personal
124 representative. For example, a lawyer who represented a client in a criminal defense matter
125 would not have implied authorization to disclose confidential information to the personal
126 representative, but instead should decline to voluntarily provide confidential information to the
127 personal representative or other third parties unless a different exception to the confidentiality
128 rule clearly applies.

129 Similarly, beneficiaries or heirs-at-law may attempt to compel the decedent’s lawyer to
130 provide confidential information that the lawyer has determined within the lawyer’s professional
131 discretion not to provide voluntarily, because it either would not serve the decedent’s interests or
132 the decedent previously indicated must not be disclosed. When under compulsion of a subpoena,
133 the lawyer acts ethically by complying with the subpoena as to any confidential information
134 sought that is not privileged. However, the lawyer should raise the appropriate privilege on
135 behalf of the decedent regarding any confidential information for which there is a good faith
136 basis to raise privilege and request that the court make a determination as to disclosure of the
137 information. ~~This may be particularly true of privileged information that may be embarrassing to~~
138 ~~the decedent.~~ As above, the lawyer should not make any disclosure of information for which the

139 lawyer believes in good faith to be privileged ~~has raised privilege in good faith~~ until the court
140 orders disclosure of the information. If the court finds that the information is not privileged or
141 that an exception to privilege applies, the lawyer may either comply with the order by disclosing
142 the information or “first exhaust all appellate remedies.” See Rule 4-1.6(d) and Florida Ethics
143 Opinions 65-7, 70-40, and 71-29.

144 Doubts about whether information should be voluntarily disclosed should be resolved in
145 favor of nondisclosure.

THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA PROBATE RULES**

CASE NO: SC10-1928

**COMMENT ON AMENDMENTS TO FLA. PROB. RULE 5.260
(CAVEATS: PROCEEDINGS)**

The Real Property, Probate and Trust Law Section of The Florida Bar (hereinafter the “Section”) submits this Comment on the amendment to Fla. Prob. Rule 5.260 (Caveats: Proceedings) adopted by the Court in its December 9, 2010, opinion and respectfully requests that the Court consider the following suggestions with respect to that amendment.

I. INTRODUCTION

The Probate Rules Committee of The Florida Bar (hereinafter the “Probate Rules Committee”) filed an out-of-cycle, fast-track report of proposed amendments to the Florida Probate Rules in response to statutory changes made by chapter 2010-132, Laws of Florida, which became effective on October 1, 2010. The Court adopted all the proposals of the Probate Rules Committee with the exception of the proposed amendment to subdivision (b) of Fla. Prob. Rule 5.260 (hereinafter the “Rule”), which specifies the required contents of a caveat. The Probate Rules Committee proposed that the Rule be amended to provide as follows:

(b) Contents. The caveat ~~shall~~ must contain the decedent's name, the last four digits of the decedent's social security number or date of birth, if known, a statement of the interest of the caveator in the estate, and the name, specific mailing address, and residence address of the caveator.

The Court, however, amended the Rule to delete the requirement that caveats contain the decedent's social security number or date of birth, if known, and a statement of the interest of the caveator in the estate, as follows:

(b) Contents. The caveat shall contain the decedent's name, ~~the decedent's social security number, or date of birth, if known, a statement of the interest of the caveator in the estate,~~ and the name, and specific mailing address, ~~and residence address~~ of the caveator.

In support of its deletion of the former Rule's requirement that the decedent's identifying information, if known, and a statement of the caveator's interest in the estate, be included in the caveat, the Court noted that the statutory changes made by chapter 2010-132, section 3, Laws of Florida (which were proposed and supported by the Section), deleted the requirement for that information to be included in the caveat. However, the reason that the Section and its Probate Law and Procedure Committee (hereinafter the "Probate Law Committee") proposed deleting the required contents of a caveat from the statute was to expunge procedure (which should properly be included in the probate rules) from the statutes. The Section and the Probate Law Committee felt the content of a caveat, particularly the identifying information, was more procedural than substantive and was already properly specified in the Rule.

II. BACKGROUND AND OVERVIEW OF RELEVANT LAW

A caveat is a written notice which can be filed with the probate court to prevent administration of estates without notice to the caveator. §731.110, *Fla. Stat.* If a caveat is filed by an interested person, other than a creditor, the court may not admit the will to probate or appoint a personal representative until formal notice is served upon the caveator. §731.110(3), *Fla. Stat.* The statute was recently amended to clarify that interested persons, other than creditors, may file caveats either before or after the death of the person for whom the estate will be, or is being, administered. The caveat of a creditor may only be filed after the person's death. §731.110(1), *Fla. Stat.* To ease the burden on the courts and clerks, the statutory amendment does provide that pre-death caveats expire 2 years after filing. The amendment also removes procedural aspects that were improperly contained in the statute and, in some respects, conflicted with the procedure contained in the Rule, thereby causing confusion among practitioners.

Article V, § 2(a) of the Florida Constitution vests in the Supreme Court the power to adopt rules for the practice and procedure in all courts. The legislature has the power to repeal a rule adopted by the Supreme Court by a two-thirds vote, but it has no constitutional authority to enact any law relating to practice and procedure. *In re Clarification of Florida Rules of Practice and Procedure (Florida Constitution, Article V, Section 2(a))*, 281 So.2d 204 (Fla. 1973). Any statute or

portion thereof which creates a procedure rather than a substantive right is constitutionally infirm because it infringes on the rule making power of the Supreme Court. *Johnson v. State*, 308 So.2d 127 (Fla. 1st DCA 1975); *Milton v. Leapai*, 562 So.2d 804 (Fla. 5th DCA 1990). Further, the enactment of laws by the legislature which contain practice and procedure creates confusion in the judicial branch when such laws are in conflict with or supplemental to various rules of practice or procedure enacted by the Supreme Court. *In re Clarification of Florida Rules of Practice and Procedure (Florida Constitution, Article V, Section 2(a))*, *supra*.

The Probate Rules Committee has diligently labored to purge substance from the rules and the 1988 amendments to the Probate Rules, *In Re Rules of Probate and Guardianship Procedure*, 531 So.2d 1261 (Fla. 1988), were the first organized step toward that goal. Although that labor was concluded, a substantial measure of procedure remained lodged in the statutes. Rule 5.010 Scope, was changed in 1988 to include (and still includes) a Committee Note which addressed this matter and provided *inter alia*:

The committee, through the proper channels in The Florida Bar (initially, the Probate Law Committee of the Real Property, Probate and Trust Law Section), intends to ask the legislature to repeal those portions of the statutes that are procedural when there are similar rules already in place, or when similar new rules are added by this opinion. It is the opinion of the committee that continuing to maintain procedure in the statutes when there is a rule specifying that procedure

is detrimental to the orderly process of the court and the public that it serves, especially when, over time, the statute and the rule may diverge. (At page 1263.)

Mindful of that direction, in 2001, the Probate Law Committee undertook a project to purge the statutes of procedure to bolster the constitutionality of the statutes. See *chapter 2001-226, Section 81, Laws of Florida*. As a result of that project, most of the procedure was removed from the Probate Code. However, as statutes are amended to make substantive changes, the Probate Law Committee continues to review the statutes to assure that no improper procedural aspects (which may result in conflict or confusion with a corresponding probate rule) remain. Further amendments are then proposed to remove the procedural aspects from the statute if there is a corresponding rule properly containing the necessary procedure. In this case, the right to file a caveat is a substantive right or a part of the law which creates, defines, and regulates rights. See *Massey v. Davidi*, 979 So.2d 931 at 936-937 (Fla. 2008); *State of Fla. v. Garcia*, 229 So.2d 2136 (Fla. 1969). That right is properly resident in the statute. In contrast, the Probate Law Committee believed that the aspects of the statute governing the contents of the caveat, particularly those concerning the identity of the decedent, fell within the method or order by which a party enforces its substantive rights. See *Massey* at 937. Such procedural aspects are more properly the content of a rule of court rather than a statute. Insofar as those procedural aspects of the statute were already

included in subsection (b) of the Rule, they were therefore removed from the statute. The removal of the content requirement from the statute did not signify a decision by the Section or the Probate Law Committee that the personal information regarding the decedent or the caveator was no longer needed. It was simply a part of the continuing effort to assure that the statutes do not contain improper procedural aspects.

III. DISCUSSION REGARDING AMENDMENT TO RULE

Regardless of the reason that the provisions specifying the contents of caveats were removed from *Fla. Stat., §731. 110*, the Section strongly believes that certain personal information relating to the decedent and to the caveator is vital to the effectiveness of the caveat procedure and should be included in the Rule. As clarified by the recent amendment to *Fla. Stat., § 731.110*, the time in which a caveat may be filed differs depending on the interest of the caveator. More specifically, a pre-death caveat may only be filed by an interested person other than a creditor. Under the Rule as amended by the Court in its December 9, 2010, opinion, the caveator is no longer required to include a statement identifying his interest in the estate. Without inclusion of that statement in the caveat, it will be impossible to determine from the face of the caveat whether it is one that can be filed pre-death, that is whether it is filed by a creditor or by an interested person other than a creditor. Furthermore, the manner in which the court and other

interested persons are required to respond to a caveat differs dramatically depending upon whether the caveat is filed by a creditor or an interested person other than a creditor. Under the current Rule, the clerk of court and attorneys will be unable to determine from the face of the caveat whether the clerk must simply notify the caveator in writing that Letters of Administration have been issued under subsection (e) of the Rule (required if the caveator is a creditor) or whether, under subsection (f), formal notice must be served upon the caveator by the petitioner before a will can be admitted or a personal representative can be appointed (required where the caveator is an interested person).

Furthermore, additional problems will arise because of the absence of the personal information in the caveat. First, a pre-death caveat expires two years from the date of filing. If the caveat is not renewed, no further action will need to be taken by an estate or the clerk. A post-death caveat, however, never expires. If a creditor's caveat (provided it is possible to determine from the caveat if the caveator is a creditor) is filed post-death for a John Jones in Miami, the clerk will be required to serve written notice upon that caveator every time an estate is petitioned for administration for any John Jones whose date of death is prior to the date the caveat was filed. The inclusion of personal information of the decedent, such as the last four digits of the social security number and the year of the date of birth for John Jones, will permit the clerk to determine which John Jones the caveat

was intended to relate to and will eliminate unnecessary repeated service of notices. Next, if a caveat is filed by an interested person other than a creditor of John Jones, no estate for any John Jones who died before (or within 2 years after) the date the caveat was filed, can be opened until formal notice is served upon the caveator. Formal notice is not complete until the notice is received by the caveator under Fla. Prob. Rule 5.040(a) (4), so if the caveator cannot be located because the caveator's address (perhaps after several years) is no longer current, the estate cannot be opened. The inclusion of personal information regarding the decedent would allow the clerk to identify the John Jones to which the caveat was directed and eliminate the unnecessary service in estates of unintended decedents and the related delay of administration of estates of individuals with common names.

The Section, the Probate Law Committee, and the Probate Rules Committee are aware of the Court's concerns about the filing of unnecessary personal or other sensitive information in court files. In light of those concerns, the Probate Rules Committee proposed changes to subsection (b) of the Rule to include a truncated version of the social security number containing only the last four digits. The Probate Law Committee and the Probate Rules Committee both felt strongly that inclusion of some part of the social security number is necessary for proper identification of the person for whom the estate is or will be administered. In addition, to comply with the proposed amendments to *Fla. R. Jud. Admin. 2.425*,

Minimization of the Filing of Sensitive Information, which are currently pending before the Court, the Section would further propose limiting the information regarding the individual's date of birth to the year of birth. Again, some identifying information is needed; however the detail in the required information can be balanced against the need to limit the filing of sensitive information.

Finally, to account for the fact that a caveat may now be filed prior to the death of an individual by an interested person other than a creditor, the language in subsection (b) of the Rule should be further amended to remove the reference to the "decedent" and replace it with a reference to the "person for whom the estate is or will be administered." This is consistent with changes to subsection (a) of the Rule proposed by the Probate Rules Committee.

IV. CONCLUSION

For the above reasons, the Section respectfully requests the Court to consider these comments and amend subsection (b) of the Rule to include the requirement to specify whether the caveator is a creditor or an interested person other than a creditor, and the requirement to include certain items of personal information about the decedent, while at the same time limiting the filing of sensitive information to that information absolutely necessary for proper identification, to provide as follows:

(b) Contents. The caveat shall contain the ~~decedent's~~ name, of the person for whom the estate is or will be administered, the last four digits of that person's social security number or that person's year of birth, if known, a statement of the interest of the caveator in the estate, and the name ~~and~~, specific mailing address, and residence address of the caveator.

Respectfully Submitted,

/s/ Brian J. Felcoski

Brian J. Felcoski, Esquire
95 Merrick Way, Suite 440
Coral Gables, Florida 33134-5310
Telephone: (305)446-2800
Florida Bar No. 764817
CHAIR, REAL PROPERTY,
PROBATE AND TRUST LAW
SECTION OF THE FLORIDA BAR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail to Jeffrey Scott Goethe, Esquire, Chair, Probate Rules Committee, 3119 Manatee Avenue, West, Bradenton, Florida 34205-3350 and facsimile at (941) 708-3225, this 3rd day of February, 2011.

/s/ Brian J. Felcoski

Brian J. Felcoski, Esquire

RPPTL 2010-2011 CLE Calendar

DATE	SEMINAR	COURSE #	CITY	HOTEL
August 6, 2010	* 31st Annual Legislative & Case Law Update	1216	Palm Beach	The Breakers
August 26, 2010	* Oil Spill Impacts in Real Property Practice	1225	Tampa	Marriott
September 14, 2010	* FAR/BAR	1134	Orlando	FAR Office
November 12, 2010	* Mortgage Law & Problem Studies	1159	Tampa	Airport Marriott
November 19, 2010	* Estate Planning & Asset Preservation	1147	Orlando	Hilton
January 2011 TBD	* Real Property Litigation	1155	Tampa	Airport Marriott
Mar. 17 - 18, 2011	* Probate Law	1177	Ft. Lauderdale/Tampa	TBD/ Airport Marriott
Mar. 31 - April 02, 2011	4th Annual Construction Law Institute	1179	Orlando	TBD
Mar. 31 - April 02, 2011	Construction Law Certification Review Course	1180	Orlando	TBD
April 8 - 9, 2011	* Wills, Trusts & Estates Certification Review Course	1186	Orlando	Hyatt Regency Airport
April 8 - 9, 2011	* Real Estate Certification review Course	1185	Orlando	Hyatt Regency Airport
April 15, 2011	* Condominium Law & Condominium Association Law	1191	Tampa	Airport Marriott
May 6, 2011	* Development & Government Regulation	1197	Tampa	Airport Marriott
May 12-13, 2011	* Trust & Estate Symposium	1167	Tampa/Ft. Lauderdale	Airport Marriott/TBD
May 27, 2011	* Real Property, Probate and Trusts Law Convention Seminar	1205	Miami	Eden Roc
June 15 - 19, 2011	30th Annual Attorney Trust Officer Liaison Conference	1210	Palm Beach	The Breakers

* Webcast Program

**Proposed Ballot for 2011 – 2012 RPPTL Circuit Representatives
from Long Range Planning Committee**

Circuit No.	Name
1	W. Christopher Hart
1	Colleen Coffield Sachs
2	Sarah Swaim Butlers
3	John Justin Kendron
3	Guy W. Norris
3	Clay Alan Schnitker
4	Brenda B. Ezell
5	Denise A. Dymond Lyn
5	Arlene Catherine Udick
6	Robert Nicholas Altman
6	Joseph W. Fleece
6	Kenneth E. Thornton
6	Hugh Charles Umsted
6	Richard Williams, Jr.
7	Sean William Kelley
7	Michael Armstrong Pyle
7	Richard Walter Taylor
7	Jerry Bruce Wells
8	Sam Wood Boone, Jr.
8	Jeffrey R. Dollinger
8	Richard M. White
9	David James Akins
9	Alex H. Hamrick
9	Amber J. Johnson
9	Stacy Ann Prince
9	Charles D. Wilder
9	Gary Charles (“Chuck”) Wohlust
10	Craig A. Mundy
10	Sandra Graham Sheets
10	Robert S. Swaine
11	Raul Perez Ballaga
11	Carlos Alberto Batlle

Circuit No.	Name
11	Aniella Gonzalez
11	Thomas M. Karr
11	Marsha Gerre Madorsky
11	Hung V. Nguyen
11	Patrick John Lannon
12	Kimberly A. Bald
12	Michael Loren Foreman
12	Percy “Allen” Schofield
13	Lynwood F. Arnold
13	Michael A. Bedke
13	Thomas Nathan Henderson
13	Stephen H. Reynolds
13	Christian Felix O’Ryan
13	William R. Platt
13	R. James Robbins
13	Susan K. Spurgeon
14	Brian D. Leebrick
15	John Robert Banister
15	Elaine M. Bucher
15	Glenn Myles Mednick
15	Robert M. Schwartz
16	Julie Ann Garber
17	Robert Brian Judd
17	Shane Kelley
17	Alexandra V. Rieman
18	Stephen Paul Heuston
19	Jane Louise Cornett
20	John T. Cardillo
20	Michael Travis Hayes
20	George W. Lange
20	Jon Scuderi